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# PREVENTION OF FOOD ADULTERATION ACT

(ACT 37 OF 1954)

# WITH RULES

[ AS AMENDED UP TO DATE ]
CONTAINING

An exhaustive and Critical Commentary, and Useful Appendices, viz. History of Food & Drug Adulteration Laws all over Europe and U.S.A., Special provision relating to Milk, Tests applied to Milk, Forms, Definitions & Standards of Quality.

BY

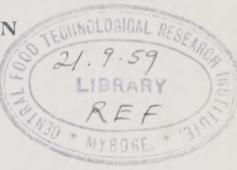
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SECOND EDITION

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#### PREFACE TO SECOND EDITION

THE first edition of the book on the Prevention of Food Adulteration Act, 1954 (No. 37 of 1954), appeared in 1956. The work proved so popular that the copies of the first edition were quickly sold out and a second edition has been called for.

All civilised countries have tried to grapple with the problems raised by adulteration of food for public health and welfare alike demand that those who batten themselves on the ill-gotten profits obtained from purveying adulterated food to the public should be shown short shrift. In India many States had their own Acts to check the evil of adulteration but in a Welfare State like ours the need was felt for fighting this menace to public health and welfare on an all-India basis with the aid of a Central Act like the Prevention of Food Adulteration Act, 1954 (No. 37 of 1954).

In England the law concerning the preparation and sale of food for human consumption is now contained substantially in one Act, namely the Food and Drugs Act, 1955 (4 and 5 Eliz. II, c. 16). The Central Indian Act is to a considerable extent modelled on the English Act. It was therefore necessary to draw upon the English authorities to elucidate the analogous provisions in the Indian Act especially as the Central Act was new. All important points of law arising under the Act have been discussed and inter-connected provisions of other statutes have been set out wherever required for complete treatment.

Four years have passed since the Act was first passed and the important judicial decisions during this period have been duly incorporated. Advantage has been taken in issuing this second edition to make the book satisfy all the needs of those interested in the administration of the Act. Valuable Appendices containing various rules, tests and special provisions are intended to increase the usefulness of the work.

Adulteration implies a certain standard of quality or purity and the Central Committee for Food Standards has and is doing valuable work in this field. The Act has certainly done much to rouse the consciousness of the public in the sphere of food adulteration and its Draconian provisions have had and are having a deterrent effect on the vendors of food to the public. But it is too much to hope that the evil of adulteration can be stamped out by legislation; it can only be checked by efficient administration of the Act.

In placing the second edition before the public, it is hoped that it will prove as popular as the first and that it will continue to deserve the support of the Bench and the Bar.

25th September, 1958.

THE AUTHOR

### PREFACE TO FIRST EDITION

The question of adulteration of food has become very acute. All articles of food sold in the market are liable to adulteration and are being adulterated. Because of food adulteration rich and poor alike have been affected in their health. Unfortunately there is not much public opinion in India otherwise there would have been such a hue and cry over this matter.

In practically all the Units of the Indian Union there were Acts to cope with the evil but they did not eradicate the evil from the country as was expected. A committee appointed by the Central Advisory Board of Health recommended enactment of all Indian legislation on the subject as long ago as 1937, but it could not be accomplished as it was a subject which the State Legislatures were only competent to legislate upon. In the Constitution. "Adulteration of Foodstuffs and other Goods" is included in the Concurrent List. It has therefore become possible for the Central Government to pass the Prevention of Food Adulteration Act, 1954 and place it on the Statute Book. In moving the Prevention of Food Adulteration Bill, Rajkumari Amrit Kaur, Minister for Health, made the following observations: "Members who have studied the Bill, will have noticed that the offence is now a cognizable offence and that a great many clauses have been brought in after consultation with all the States and after close scrutiny of all the existing measures in the States, in order to see that it becomes easier for the State Governments to deal with companies or individuals who go in for this terrible crime, because it is a crime against humanity to adulterate food. And I have no doubt that the measures that have been suggested in the Bill as amended by the Select Committee, and as further amended in the Lok Sabha will go a long way towards checking the evil, or at any rate, giving the State Government means to check the evil. No one knows better than I that legislation alone can never get rid of dishonesty, but deterrent punishment does have some effect. And I do hope that with the passage of this Bill much will have been achieved in the right direction."

There is much truth in the observations of the Honourable Minister that the legislation alone cannot have the desired effect of eradicating the evil of adulteration completely unless there is co-operation by the public. The public so far as this subject is concerned is not aware of the healthy provisions of the law designed to eradicate adulteration. It is with this object that this book has been written and it is hoped that it will be found useful by the legal profession and the laity.

25th September, 1956.

R. B. SETHI

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## INTRODUCTION

Adulteration<sup>1</sup> is the debasing of a commodity by admixtures of foreign, inferior or harmful material or by reducing its grade below that which it is represented to be, to the loss or disadvantage of the user, either in money or in service rendered.

Adulteration may increase weight or bulk, improve or alter appearance or flavour to simulate an article of higher grade or different kind. Sometimes a valuable substance is extracted and substitution made of a colour or flavour which conceals the loss (e.g. skimmed milk given the appearance of creaminess by addition of a yellow dye). Sometimes one commodity is sold under the name of another (e.g. a mixture of low grade white flour and bran sold as graham flour).

In another class of cases poisonous, tainted or diseased material is mixed with sound (decomposed salmon tinned with fresh salmon). Defects may be concealed by special processing or packaging (tainted sausage disguised by strong spices). Factory-made furniture is very commonly modified and finished to simulate antiques. Sometimes even wormholes are introduced into new lumber by ingenious devices, and a close imitation of the wear and tankard dents of centuries of European wassailing is produced on table tops in American mass production plants.

Recorded practices of adulteration date from the earliest times and have been in frequent evidence throughout the civilized world since the early Middle Ages. The methods and devices used have at all times drawn from the most advanced ideas of science and the arts, and important discoveries in chemistry have formed the basis for a whole system of adulterative practices—the use of artificial preservatives in foods, for example.

The reasons for adulterative practices are constant, and plain enough, but the technique is continually changing. The protection afforded the ultimate consumer (who is given no practicable redress under the common law) varies from no protection at all in some countries and States to fairly effective safegua: ds for commodities that enter into interstate commerce and which, moreover, affect life or health. These include food and drugs but not cosmetics; seeds and fertilizer and insecticides, involving the welfare of a large agricultural population; and a few kinds of goods, such as soap, when infrequently the question of unfair competition brings the matter into issue before the Federal Trade Commission in the interest primarily, not of the public, but of competitors who are put at disadvantage in the market.

In a very limited class of commodities, such as meat and milk, a considerable degree of protection is afforded, in a very few States, even when production and distribution are interstate. In many jurisdictions, however, such control activities as exist are dealt with by public authorities more as a political football than as a problem for technicians.

Adulteration appears as a factor in every kind of merchandise. Fugitive and water-soluble dyes are substituted for permanent pigmenting materials in ordinary writing ink and in textile fabrics; castile soap is made with fats far different from and cheaper than, olive oil; inoperative or "dummy" vacuum tubes are introduced into radio sets because such sets are commonly valued by the buyer on the basis of the number of tubes employed; illuminating gas

<sup>1.</sup> Encyclopaedia of Social Sciences, Vol. I, pp. 466-468.

of the inefficient carbon filament type are made to simulate the modern efficient tungsten I mps; and reworked wool, or shoddy, is used as a cheap and non-durable sub-titute for virgin wool in clothing. Most of such adulterations go undetected by an overal elming majority of consumers but are not likely to clude inspection by the Government or by the few hundred of the more progressive manufacturing corporations which conduct claborat and costly tests to protect themselves against commercial cheating. Against large scale frauds as the substitution of inferior woods for mahogany in furniture, of inferior, split and artificial leather for real leather in luggage, and of hare and woodchuck furs for sable, fox, mink and skunk, the ultimate consumer has no practicable mode of protection under the going structure of law, administrative government and industry. Unfortunately middlemen or retailers, who nominally act as the purchasing agents for the consumer, have only to a negligible degree offered him assistance in his increasingly varied and difficult problems of purchase.

The amount of technical and legal activity required even for the moderate amount of food and drug control work that has been carried on in the United States since 1906 can be judged from the fact that, under federal control alone, which is limited to interstate commerce and imports, about 25,000 cases have been reported to the legal arms of the Government for court action, and decisions have been handed down in 16,000 cases. Imported goods have been proceeded against in nearly 200,000 cases; 300,000 food and drug samples have been collected and examined.

The practical control of adulterative practices of all kinds deemds first upon standards—that is, accepted uniform definitions and requirements; and second, upon an active and coordinated system of inspection, examination and test based upon those standards. The common adulteration of paint, for example, with all sorts of inferior oil vehicles and mineral "extend rs" and inert powders, like whiting and ground lint, remains impossible to control in the public interest until a proper paint for a given purpose has been described and defined in precise and reproducible terms in the form of a standard specification. As yet comprehensive specifications for paint are practically available only through their use by the federal government in its purchases.

Such a national system of specifications already exists for many of the more important food and drug products. For other consumers' goods, standards are largely lacking or, if in existence, are not in common and recognized use. Their growth in the fature will probably depend largely upon such national and governmental standardizing agencies as the U.S. Bureau of Standards and the Amarican Standards Association, a federation of forty organizations made up of seven government departments, twenty-three national industrial and trade associations and ten technical societies.

It seems probable that the wide development of such standards must wait upon a considerable and articulate public demand. The development of this demand will very likely depend upon educational activities conducted by one or more of the great foundations. There is not—and perhaps there cannot be, with the present American political structure—any other powerful organized group of a sorthering a pre-lominant and financially potent economic interest in the improvement of the consumer's status as to the quality of the goods which he buys. Reform where it has occurred in the past in a few special fields, has followed expressive of very bad practices so extensively pursued as to characterize, in effect, a whole industry or group of industries, and so to lead to a radical legislative remedy in the protection of public interest and welfare.

# Prevention of Food Adulteration Act

(No. 37 of 1954)

An Act to make provision for the prevention of adult ration of food.

[29th September, 1954.

BE it enacted by Parliament in the Fifth Year of the Republic of India as follows:

#### PRELIMINARY

- 1. (1) This Act may be called the Prevention of Food Short title, extent Adulteration Act, 1954.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

## SYNOPSIS

1. Title.

2. Title of a chapter.

3. Preamble.

- 4. Interpretation clause.
- 5. Marginal notes.
- 6. Headings.
- 7. Sections.
- 8. Proviso.9. Explanation.
- 10. Illustrations.
- 11. Strict constructions.
- 12. Effect of repeal on transactions completed.
- 13. Effect of repeal.
- 14. English decisions.
- 15. Statement of Objects and Reasons.

- 16. Prior Law.
  —State Act.
  - -Power to extend enactment to certain Part C States.
- 17. The Preventian of Food Adulteration Act, 1954.
- 18. Scope and Object.
- 19. Duty of Courts.
- 20. Extent of operation of Act.
- 21. India.
- 22. Non-applicability of the Act to State of Jammu and Kashmir.
- 23. Date of operation of Act.
- 24. Absolute duty and liability of master or proprietor, etc.

1. Title. The title of an Act is undoubtedly part of the Act itself and it is legitimate to use it for the purpose of interpreting the Act as a whole and ascertaining its scope.<sup>1</sup>

The short title, however, is given to the Act for the purpose of facility of reference. In the words of Lord Moulton "it is a statutory nickname to obviate the necessity of always referring to the Act under its full and descriptive title." "It is not legitimate, in my opinion." says Lord Moulton in Voch r & Sons Ltd. v. London Society of Compositors, to use it for the purpose of ascertaining th scope of the Act. The full title and preamble have been often used to determine the scope and purview of the Act and the object of the Legislative.

2. 1913 A. G. 107. 3. Griffiths Carr v. Griffiths, (1879) 12 Ch. D. 165, per Josel, M. R.: Der feel Recal Council v. Bexley Health & Co. 1898 A.C. 210; Debendra Narain Roy v. Jogindra Narain Deb, 1936 Cal. 593, 622; Abdullah Khan v. Bahram Khan, 1935 Pesh. 69.

Vocher & Sons Ltd. v. Society of Compositors, 1913 A. C. 107, 128; Fielding v. Morely Corpn. (1899) 1 Ch. 1, per Lindley, M. R.
 1913 A. C. 107.

The title, however, is not conclusive of the intent of the Legislature but constitutes only one of the numerous sources from which assistance may be obtained in the ascertain next of that intent in cases of doubt. It is but indicutive of the legislative intent. It will not supply defects or omissions in the enacting part, but may be resorted to merely as an aid in ascertainment of the legislative intent where the meaning is uncertain by reason of the use of general lauguage of indefinite signification of the words of doubtful impo t.1 Reference to the long or short title of a statute for purpose of interpretation must always be secondary to reference to the enacting part, for the title may be colourless, or the Act may deal with subjects not expressed in the title.2

The construction of a statute cannot be limited by its title.<sup>3</sup> There is no doubt as to the construction to be put upon the words of the section and though it clearly exceeds both the title and preamble, courts are bound to give the section its full construction.4

In other words if the statute is clear and unambiguous no reference can be made to title. If the statute is ambiguous the title may be considered as an aid in ascertaining the legislative intent.5

While the title of an Act or a section heading will not limit the plain meaning of the text, it may be of aid in resolving an ambiguity.6

Title of a chapter. It is not permissible to use the title of a chapter to restrict the plain terms of an enactment.7 In England although the title of a statute was recognized and attached to it by Parliament until quite modern times it was not considered a part of the statute and was therefore excluded in constructing it.8 "The title though it is occasionally referred to as aiding in construction of an Act is certainly a part of the law and in strictness ought not to be taken in consideration at all." This rule had not been observed invariably 10 for the mind when labouring to discover the design of the Legislature, naturally seized on everything from which some aid could possibly be derived.11 It is now however settled law that title of a statute is an important part of it12 and may be referred to for purposes of ascertaining its general scope. 13

Crawford: Statutory Construction, Art. 206 at p. 359.

Craies on Statute Law, 5th Ed. at pp. 182-183.

3. In re Gross, (1904) 73 L.J. P. 82; Sutherland: Statutory Construction, 3rd Ed.,

Vol. 2, Art. 4802 at p. 344. Wilmot v. Rose, (1854) 23 L. J. Q. B. 281; Saga v. Eicholz, (1919) 2 K. B. 171,

5. See Coomber v. Justice of Berks, (1882) 9 Q. B. D. 17, 32, 33 per Huddleston. B. Also see Briggs v. Walker, 171 U. S. 466: 43 L. Ed. 243; U. S. v. Katz, 271 U. S. 354: 70 L. Ed. 985; Bonnerji: Interpretation of Deeds, Wills and Statute, 1909 Ed. at 203 (T. L. L.)

Minite v. Commissioner of Inland Revenue, 313 U. S. 1: 85 L. Ed. 1149.

Income-tax Com nissioner v. Ahmadbhai, 1950 S. C. 134.

8. Hunter v. Nicholls, 1 Mac. & G. 640.

Salkel v. Johnson, 1819: 18 L. J. Ex. 89; in the Mill v. Walton, 1763 6 Mach. 6.1; Produce and 1040 11 Rep. 33 b; R. v. Waldison, 1768: 1 W. B. L. 95; 1. G. v. Waymouth, (1743; Ambl. 22; Chinee v. Atoms, 1698) 1 Lord Rayon

77; Jeffrys v. Boosey, (1854) 4 H.L. Cas. 982; Shrewsbury v. Scott, (1859)6 C.B.N.S. 1; Claydon v. Green, (1868) L. R. 2 C.P. 522; Sage v. Eicholz, (1919) 2 K.B, 171; Hadden v. The Collector, (1868) 5 Wallace 110 (American case).

Wallace 110 (American case).

R. v. Wright, (1834) 1 A. & E. 446;
Alexendra v. Newman, (1846) 2 C. B. 141;
Rawley v. Rawley. (1876) 45 L. J. Q. B.
675; Taylor v. Newman, (1863) 32 L. J.

M. C. 189; Bentley v. Botherham, (1876)
46 L. J. Ch. 284: Middlesex Justices v.
R. (1884) 9 App. Cas. 772; Byron v.
Child. (1850) 19 L. J. Ex. 264; East
India Dock v. Shaw, (1888) 29 Ch. D.
531. 531.

U. S. v. Fischer, (1805) 2 Branch 386; U. S. v. Palmer, (1818) 3 Wheat 631.

U. S. v. Palmer, (1818) 3 Wheat 631.

12. Fielding v. Morely Corporation, (1899) 1
Ch. 33: Ambler v. Bradford Carporation, (1902) Ch. C.A. 585; Jones v. Shervington, (1908) 77 L. J. K. B. 774.

13. Fenton v. Thorley. (1903) A. C. 447;
London Country Council v. Bromondsey Brow the Co., (1911) 80 1. J. K. B. 144;
A. G. v. Margale Prev Co., (1900) 69
L. J. Ch. 331; Consett Iron Co. v. Glescering Trastees, 1935) 2 K. B. 42; Watkinsen, v. Hollington, (1944) 1 K. B. 16. v. Hollington, (1944) 1 K. B. 16.

The title of a chapter in a statute is not the determining factor regarding the interpretation of the provision of a section in the chapter but the title certainly throws considerable light upon the meaning of the section and where it is not inconsistent with the section and should presume that the title correctly describes the object of the provisions of the chapter. The heading of a chapter in a statute was not considered by their Lordships of the Privy Council in Secretary of State v. Mask & Co.<sup>2</sup> to be of any material evidence in the construction of Sea Customs Act.

It is immaterial whether the title is long or shot.<sup>3</sup> But the title can in no case override the clear meaning of the statute.<sup>4</sup> There is no doubt as to the construction to be put upon the words of the section and although it clearly exceeds both the title and the preamble, courts are bound to give the section its full construction.<sup>5</sup>

3. Preamble. It has been said that the preamble is the key to the construction of the Act and should be resorted to, to unlock the minds of its makers. As such, it is an excellant aid to construction of an ambiguous Act or one of doubtful import.<sup>6</sup> Preamble is a part of an Act but it is not an operatice part thereof.<sup>7</sup> It is settled law that a preamble does not control or override the plain provisions of a statute and where a preamble contradicts the enacting part of the statute and that portion is quite clear the enacting part must prevail over the preamble.<sup>8</sup>

The preamble is not without importance in a statute. The preamble precedes the words of enactment and is in the nature of a recital of the facts operative on the mind of the lawgiver in proceeding to enact. He has always been held that if any doubt arises from the terms employed by Legislature a safe means of collecting the intention is to call in aid the ground and cause of making the statute and to have recourse to preamble. But it is very doubtful whether a preamble retrospectively inserted several years after passing of an Act can be looked at by the Courts for the purpose of discovering what the true intention of the Legislature was at the earlier date. It is true that the preamble of a statute can neither restrict nor extend the enacting part when the language and the object and scope of the Act are clear and not open to doubt, but where such doubt exists the preamble does afford a valuable guide to the interpretation of an Act or a particular section there in. If a word has more than one meaning and it is a matter of doubt in which of the meanings it is used in the body of the Act it is permissible to look at the preamble to

 Dwarika Prasad v. B. K. Roy, 1950 Cal. 349, per Sen.

2. 1940 P. C. 105, 109; but see Dwarka Nath Chaudhari v. Tafzar Rehman Sarkar, 44 Cal. 267, 271.

A. G. v. Margate Prier & Co., (1900) 69
 L. J. Ch. 331.

4. Williams v. Rose, (1859) 23 L. J. Q. B. 281.

 Ibid.
 Shamsher Ali v. Ratanji, 1952 Hyd. 58 (F. B.).

7. See Mohammad Yusuf v. Imtiaz Ahmad Khan, 14 Luck, 492: 1939 Oudh 131, 137 (F.B.)

per Yorke, J.

8. Benwari Lal Sarma v. Emp., 1943 Cal. 285; 44 Cr. L. J. 673; 207 I. C. 481; (1942) Kar. 127; 202 I. C. 405; 43 Cr. L. J. 838; 1942 Sind 65; Emperor v. Dholaram Holaram, (1941) Sind 221.

See Radha Kishen v. Ramnagar Co-operative Society, 1951 All. 341, 346 (F. B.) per Malik C. I.

Malik, C. J.

10. Craics on Statute Law. 5th Ed. at p. 38; see also Sutherland: Statutory Construction, 3rd Ed., Vol. 2, Art. 4807 at p. 351.

11. Bhola Prasad v. Emprror, 21 Pat. 557: 1942 F. C. 17: (1942) F. L. J. 17: (1942) 2 M. L. J. 6 F. C.,: 43 Cr. L. J. 181: 14 P. L. R. 261: 1942 M. W. N. 378: 1942 P. W. N. 129: 76 C. L. J. 1: 46 C.W.N. (F. R.) 32: 1942 O. W. N. 411: 1942 A.W.R. (F. C.) 10.

12. Ibid.

Charles Reginald v. Elizabeth Fin h. (1943)
 Lah. 765: 209 I. (1. 522: 1943 Lah. 260.

decide which of the several meanings attaching to the word was intended by

the Legislature.1

Re our e may be had to the terms of a preamble in two classes of cases. The first class of cases is, where the text of the statute is susceptible of different constructions. The second class of cases is where it is clear that the Legislature intended that the very language use I in the ear-tment must have some limitation put upon it. The preamble may be used to indicate to what particular instances the enactment was intended to apply.2

Whether any section is sufficiently clear by itself or whether it is ambiguous, a recourse to preamble as an aid in construing it is a que tion, which is invariably for the Court to decide. It is not permissible to create or imagine any ambiguity in order to bring in the aid of the preamble. To do so would in several cases frustrate the enac ment and defeat the general intention of the

Legislature.3

4. Interpretation clause. As a part of legislative function a Legislature may enact law and define its meaning. Where in the same statute the Legislature defines the meaning of the words used, it expresses most authoritively is intent and its definitions and constructions are binding on the Courts. Such internal legislative construction is of the highest value and prevails over executive or administrative construction and other intrinsic aids.4

A definition given in the Act must be substituted for the word defined

whenever it occurs in the Act.5

When a word or phrase defined as having a particular meaning in the enactment, it is that meaning alone which must be given to it, interpreting a section of the Act unless there be anything repugnant in the context.<sup>6</sup> When Legislature defines the language it uses, its definition is binding upon the Court and this is so even though the definition does not coincide with the ordinary meaning of the words used.7

5. Marginal Notes. In England notes are not to be taken as parts of the statute.8 In India there is a confliction of judicial authority retarding the value of marginal notes as aid in interpretation of statutes. In a large number of cases it has been stated that marginal notes are not parts of the statute and it is not permissible to refer to them in the construction of statutes nor will the Courts treat them as index to what the section was meant to apply to.9 This view finds support in a decision by their Lordships of the

 Manohar Lal v. Emperor (1943) Lah. 95: 1943 Lah. 1: 202 I. C. 735: 43 Cr. L. J. 897: 44 P. L. R. 524.

2. Kannamal v. Kanasahai, 1941 Mad. 629: Darbar Paliala v. Narain Das Gulab Singh, 1911 Lah. 302; Kishan Chanl & Co. v. Nur Mahommad, 1914 Lah. 94.

(1879), 2 Q. B. 242: 68 L. J. Q. B. 382; Nepra v. Sajir Parmanik, 1927 Cal. 763; Jon what Nath v. Jahr Nath, 1938 Cal. 211. 3. Forelly, Keaptro Park Rase Course Co.,

4. Sutherland on Statutory Construction, 3rd Ed., Vol. 2, Art. 3002 at pp. 222.

Ir it Charlia v. Bombay Province, 1950 Bom. 114 p. r. Tendolkar J.

6. Dod Singb v. Gardwaa Seri Akal Takhit. 1023 L.th. 325, 328.

Satherland: Statistory Construction, 3rd

Ed., Vol. 2, Art. 4814 at p. 358.

Character of the Hard Strain of the

D. 465, per James, J.: Sutton v. Sutton, (1883) 22 Ch. D. 513, per Jessel, M. R.

Punardeo v. Ram Sarup, 25 Cal. 858; J. M. DSouza v. Reserve Bank of India; 1946 Bom. 510; Dukhi Mullah v. Holway, 23 Cal. 55; Sushil Kumar v. Emperor. 1913 Cal. 489; In re Rattvijt Romjt. 1941 Bom. 497; In re P. Naten Mudaliar, 1927 Mad. 156; Thola v. Suder. 1940 Mad. 8: Summit v. Emperor. 1932. 1940 Mad. 3; Syemi v. Empyor, 1932 Mad. 391; Dhower Urbu. Bank v. Krishna Rao, 1933 Bom. 338; Commission of In om-Tax v. Parasram, 195 Mad. 631: Lehore Bank Ltd. v. Kidar, 1915 Lah. 271: 31 I. C. 746: Dhugi Bhu v. Gurpi Khandu, 1933 Bom. 388; Mother v. Empror, 1926 Born. 382 Palano Nivain v. Collector of Thurs, 1922
Bom. 261: Shotoper Spiriting and Working
Co. v. Pandhari Nath, 1928 Bun. 341:
Michael Empire, 1938 Sunt 9: June 1
Day v. Danodar Das, 1927 Bom. 424; Balaji Singh v. Gangamma, 1927

Privy Council given at a time when it was binding on all the High Courts in India. "It is well settled", remarked Lord Machaghten, "that the marginal notes cannot be referred to for the purpose of construing the Act. The contrary view originated in a mistake and it has been exploded long ago. There seems to be no reason for giving the marginal notes in the Indian statute and greater authority than the marginal notes in an English Act of Parliament. The contrary view was taken in the undernoted cases.2 and it has been held that marginal notes although they form no part of the section are of some help as they show the drift or trend of the section and clucidate and illumine its meaning where there is any doubt about the meaning of the word used. Thus though these marginal notes could not be used for interpreting or curtailing the provisions of a section where it is plain on the express language of it, they could be used to clear the ambiguity.

- 6. Headings. The heading prefixed to sections or set of sections are preamble to these sections.3 If the language of a section is clear, headings are not to be taken into consideration.4 Headings in a statute can be referred to for the purpose of finding out the meaning of a doubtful expression in a section.5
- Sections. See ions constitute the principal or enacting art of a Every section of the statute is a substantive enactment in itself. One section may contain more than one enactment.6 In Nuth v. Tamplin, Jusel, M. R. observed: "Now anyone who contends that section of an Act of Parliament is not to be read literally must be able to show one or two things, either that there is some other section which cuts down its meaning, or else that the section itself is repugnant to the general purview of the Act.

And yet if there is a latter section in such Act repugnant to a former one, the latter must be accepted as repealing the former.8

Bom. 85; Brij Mohan Singh v. Tulsiram 1940 Nag. 3.7; Ramad . . L. paur, 1926 Oudh 15; Ohst. Selubai v. Bajah Khan, 1917 Nag. 215; Sheik Chamman v. Emperor, 1920 Pat. 22.

1. Baliaj Kumar v. Jagatpal Singh, 26 All.

2. Gijendra Singh v. Durga Kumari, 1925 All. 503: Euperr v. Lanil, 1933 Bom. 417; Emperor . Fulabhar, 1940 Bom. 303. Muranlan v. S. C. v. of S. de. 1939 Cal. 313; S. y. of Stury V. Brithey Manifoldly 1935 Brin. 311; Stient the V. Porter, 1913 Cal. 377; Vishandas v. Lachhmandas, 1944 Sindu; Ram Krishna v. Bapurao, 1938 Bom. 284; Kanesha av. Bhillin, Vin in, 20 Cal. 609; In re. A. Snith, 1921 Mad. 309; Sardarmal v. Dav Ghanshan, 1935 Nag. 20; Ganpatrao, v. Emperor, 1932 Nag. 174; Bilashpur Municipality v. Wananan, 1941 Nag. 293; Naranjanswami v. Rangaswami, 1936 Mad. 749.

Official Assignnee v. Chunniram Motilal, 1933 Bom. 346: 1933 Bom. 51, 57, quoting Maxwell, Interpretation of Stautes, 9th Ed. at p. 54; see also Mst. Savitri Devi v. Dwarka Prasad, 1939 All. 305, 307; Fletcher v. Brikenhead Corporation, (1907) 1 K. B. 205, 218; Martins v. Fowler, 1926 A. C. 746, 750, per Lord Duling; Wie Sie L'AC Alan of New Zealand v. Melbourne Harbour Trust Commis-

sioners, (!884) 9 A. C. 365.

K. J. J. R. D. L. L. B. Mad. 39: 1925 Mad. 609, 612; Shadam C. Shan S. Shan May Golden i. 60 Cal. 936: 1936 Cal. 699; Har Prasad Singh v. District Magistrate, 1949 All. 413: Rent reliable v. Blette P. Call. 1950 Orissa 125, 127 (F.B.); R. v. Surrey, (1947)

2 All. L. R. 24h.
Enform v. Inevil Surad Schih, 54 Bonn.
537 : 1935 Bonn. 117 (F. B.), for Bonumont, C. J.; Fletcher v. Brikenhead Corporation, (1907) 1 K. B. 205, 213, per
Collins, M. R.; K. Schilm Mandaray
Den v. Bh. (a. Patrick, 1900 Orient 125, 127 ; Ramasa rates v. Blog out Prasad, 51 All. 411.: 1929 All. 53, 58, as giving a contemporarie expension of the meaning of a section.

R. v. N. Ji-Uph Table Med. 200 (1824)3 Barnwell and Cresswell's Reports, King's Bruch. 50, 71; Halibury, Liws of En land, 2nd Ed., Vol. 31, at p.

(1881) 8 Q. B. D. 247, 253. Crawford, Statutory Constructions, at p. 671.

- 8. Proviso. A proviso to a section is not independent of the section calling for independent consideration or construction detached from the construction to be placed on the main section, as it is merely subsidiary to the main section and is to be construed in the light of the section itself. The object of the proviso is to carve out from the main section a class or category to which the main section does not apply: and in so carving out the Court has always to bear in mind what is the class referred to in the main section and must also remember that the carving out intended by the proviso is from the particular class dealt with by the main section and from no other class. The proviso cannot possibly deal with an entirely different topic.1
- 9. Explanation. The mere description of a certain provision, such as "explanation" is not decisive of its true meaning. The interpretation must obviously depend on the words used therein, but this must be borne in mind that where the provision is capable of two interpretations, that should be adopted which fits the description.2
- 10. Illustrations. Illustrations to a section are valuable guides in ascertaining the meaning of a section.3
- 11. Strict construction. As all penal laws affect the liberty of the subject, they have to be construed strictly.4 A strict construction requires, at least, that no case shall fall within a penal statute, which does not comprise all the elements which whether morally material or not, are in fact made to constitute the offence as defined by the statute.<sup>5</sup> A penal statute should as a rule be interpreted in an atmosphere free from all bias and, if necessary, where the e is an ambiguity in favour of the subject. Where two equally reasonable interpretations are possible, the penal provision should be construed as not to place the burden on the subject. An Act entailing penal consequences should not be applied to any one who is not bought within it in express language8. It should not be forgotten that it is the duty of the tribunal to interpret the law and not to make it. They have defined rules embodied in an Act and it is their duty to follow them. If there are any Lecunae in law it is no part of their functions to supplement them for hard cases make bad law. The law on the subject of construction of penal law cannot be better laid down than in the following words of Maxwell:

"The rule of strict construction does not, indeed, require or sanction that suspicious scrutiny of the words or those hostile conclusions from their

1. Cambatta & Co. Ltd., v. Commissioner of Income-Tax, Bombay City, (1952) 21 1.
T. R. 121: 1952 Bom. 290: 1952
B. an. C. 53: 54 Bom. L. R. 202.
2. State of Bombay v. United Motors (India)
Ltd. 153 S. C. 252.

\*\*Comparamin Chattar v. Karubasuami

1.1. 153 S. C. 252.

3. Kumarsami Chelliar v Karupaswami M. p. ...ar. 65 M. L. W. 1047: (1952) 2 M. L. J. 785.

4. Pa' lin, 2 A. L. J. 26: Birojpel, 7 A. L. J. 181: Hirt, 1 B. 308; Ganesh v. Narayan, 13 B. 600; Narottamdas Ibid 601; Ka' lang, 3. C. 211; Kazi Zeamuddin, 2ll C. 501; Hishir in 5 C. W. N. 108; Sheodin 10A. 115; High Court Bar Association v Furphine. (1941) Lah. 765: 1941 Lah. 301: 13 Cr. L. J. 705; Baldeo v. Grown, 42 P. L. R. 25: 7 g. d. Singh v. Emperor, 1943; P. L. R. 25: 7 g. d. Singh v. Emperor, 1943; P. L. J. 515: 44 (r. L. J. 745; Hithing v. V. Empro, 1937 Bonn. 28: 3ll Cr. L. J. 45; 38 Born. L. R. 1115.

5. Maxwell: Interpretation of Statutes, 9th Ed. p. 270.

Madho Saran Singh v. Emperor, 1944 All. 42; 1943 All. 379; 212 I. C. 83; 45 Cr. L. J. 491: 1943 A. W. R. 332: 1943 A. L. J. 511.

Guranditta v. Emperor, 39 Cr. L. J. 970: 1988 Lah. 691: 177 I. C. 975; Bhai Lal Chand v. Emperor, 1942 Lah. 253

(more favourable to the subject is to be

taken.)

taken.)

London County Council v. Aylesbury Diary
Co. (1898) 1 Q. B. 106, 109, per Wright
J., Rathanmal v. Secretary of State (1940)
Mad. 87: 1939 Mad. 963, 967: Veerarjan v. Secretary of State, (1940) Mad.
521, 522, Ismail Panj: v. King Emperor,
1926 Nag. 137: Randal v. Schmalt (1882)
8. Q. B. D. 603, 603: see also U. S. v.
Wilteberger, (1820) 5 Wheaton (U. S.)
76, 96.

ambiguity or from what is left unexpressed, which characterise the judicial interpretation of affidavi's in support of ex parte applications, or of Magistrate's convictions, where the ambiguity goes to the jurisdiction. Nor does it allow the imposition of a restricted meaning on the words, wherever any doubt can be suggested, to withdraw from the operation of the statute a case which falls both within its scope and the fair sense of its language. This would be to defeat, not to promote, the object of the Legislature, to misrcad the statute and misunderstand its purpose. A Court is not at liberty to put a limitation on general words which is not called for by the sense, or the objects, or the mischiefs of the enactment, and no construction is admissible which would sunction a fraudulent evasion of an Act. But the rule of strict construction requires that the language shall be so construed that no cases shall be held to fall within it which do not fall both within the reasonable meaning of its terms and within the spirit and scope of the enactment. Where an enactment may entail penal consequences, no violence must be done to its language to bring people within it, but rather care must be taken that no one is brought within it who is not within its express language. To determine that a case is within the intention of a statute, its language authorise the Court to say so, but it is not admissible to carry the principle that a case which is within the mischief of a statute is within its provisions so far as to punish a crime not specified in the statute, because it is of equal atrocity or of a kindred character with those which are enumerated. If the Legislature has not used words sufficiently comprehensive to include within its prohibition all the cases which fall within the mischief intended to be prevented, it is not competent to a Court to extend them. It is immaterial, for this purpose, whether the proceeding prescribed for the enforcement of the penal law be criminal or civil,"

12. Effect of repeal on transactions completed. Transactions that have been completed, rights that have been incurred while a statute is in force are (not in absence of express provisions to the contrary), affected by the mere fact that the statute has ceased to be in force. This rule s ems to be founded not only on considerations of convenience but also of reason and justice. It applies with equal force to statutes that had been expressly repealed and to temporary statutes the terms of which had expired. 1

It is a general rule that where Legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending action, do not affect them. But there is an exception to the rule, namely, where enactments merely affect procedure and do not extend to the right of action. It is perfectly settled that if Legislature forms a new procedure, that instead of proceeding in this form or that you should proceed in another and a different way, clearly then bygone transactions are to be sued for and enforced according to the new form of the procedure.<sup>2</sup>

13. Effect of repeal. "I take the effect of repealing a statute to be, to obliterate it as completely from the records of Parliament as if it had never been passed," and it must be considered as law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law.<sup>3</sup>

Jogendra v. Superintendent of Dum Dum Special Jail, 60 Cal. 742: 1933 Cal. 280: Stevenson v. Oliver, (1841) 10 L. J. Ex. 338: 151 L. R. 1024.

<sup>2.</sup> Suche & Co., Ltd. in re, (1875) 1 Ch. D. 48; Gardner v. Lucas, (1878) 3 A. C. 582; Kedurnath v. Turni Prasad, 1921 Pat. 185, 186.

<sup>3.</sup> Kay v. Goodwin, (1830) 6 Bing. 576; 31

R. R. 500, per Tindal, C. J.; see also Lukshmunao v. Krishmiji v. Bal Kullur Rangnath, 36 Bom. 617, 6/1; Digundar Paul v. Taffazuddi, 60 Cal. 1938; 1934

Cal. 80 (2); Watson v. Winch, (1916) 1

K. B. 638; Att.-Gen. v. Lamplough, (1878) 3 Ex. D. 214, 217.

Where an Act repeals a previous Act and provides that all orders is ned under the repealed Act shall, so far as may be, be deemed to have been issued under the new Act, the provision is designed to safeguard the validity of order, appointments, etc. issued under the repealed Act and not to give retrospective effect to the new Act.1

It is well settled provision of law that the repeal of a statute does not repeal such portions of the statute as has been incorporated into another statute. If the original act is repealed the incorporated section or sections still operate in the latter Act.<sup>2</sup> It seems no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition.3 Maxwell in Interpretation of Statutes, states:4 "Where the provisions of a statute a.e, by reference, incorporated in another and the earlier statute is afterwards repealed the provision so incorporated obviously continue in force so far as they form part of the second enactment."

When a by-law is made under an Act of Parliament, the repeal of the Act abrogates the by-laws unless the by-law is preserved by the repealing Act by means of a saving clause or otherwise.5

14. English decisions. Where the Indian statute practically reproduces the English enactment it would not be proper to neglect the judicial decisions in England which have decided the proper construction of the section to be one thing and not another.6 "English decisions are not precedents which govern us", said Sankaran Nair, J., in Annapuranaman v. Akayra.7 "But are only referred to for the purpose of finding out the principle underlying these decisions and to explain Indian statutes which are usually framed with reference to those decisions." "Where the law of British India," opined Dunkley, J., in Emperor v. Dampala8 "appears on examination to be the same as the law of England on any subject, the decisions of English Courts on that subject form a more valuable guide to the Courts in India and a decision of the House of Lords on such subject must be considered to be of paramount authority in India."

Even though the decisions of English Courts are not binding they are of weight, specially because the questions as to whether a piece of legislation provides merely for a matter of procedure or allows vested rights are obviously qu stiens of general principle in regard to which the law could not possibly be different in England and in India. Such decisions are powerful persuasive precedents.10

15. Statements of Objects and Reasons. The following is the Statement of Objects and Reasons for the bill which was passed into the Prevention of Food Adulteration Act, 1954.

1. Busant Singh v. Rampil Singh, 1919 Oudh

 Model. Shoft v. State of West Bengal, 1951
 Cal. 97; Clarke v. Bradlaugh, (1881) 8 Q. B. D. 63, 69; Jenkins v. Great Central Railway. (1912) 1 K. B. 1.

Such as of St. to v. Hindestan Co-operative In trans Suchy, Ltd., 1931 P. C. 149, 152. The general principle is when a parent Act is repealed all laws passed under that Act stand repealed unless there is saving provision in the repealing enactment; Mst. Aliqa Begam v.

Abdul Moghin Khan, (1940, All. 455: 1940 All. 272 (reversed on main point in 1940 F. C R. 110.,

9th Ed. at p. 406, Watson v. Winch, (1916) 1 K. B. 638. Gurauna Sahib v. Appalla Naidu, 1928 Mad. 831: quoting Joseph Trintle v. George Hill, 11880 5 A. C. 342. 36 Mad. 544, 54 .

- 1937 Rang. 83, 87: 14 Rang. 606 (F.B.). Kulkarni v. State of Bomber, 1951 Bom. 105, 110.
- Bajranglal Laduram v. Ganesh Corn Co., 10. 1951 Cal. 78, 82.

"Laws exist in a number of States in India for the prevention of adulteration of foodstuffs, but they lack uniformity, having been passed at different times without mutual consultation between States. The need for Central Legislation for the whole country in this matter has been left since 1937, when a committee appointed by the Central Advisory Board of Health recommended the step.

'Adulteration of foodstuffs and other foods' is now included in the Concurrent List in the Constitution of India. It has therefore become possible for the Central Government to enact an all-India Legislation on this subject. The Bill will replace Local Food Adulteration Laws where they exist and also apply to those States where there are no local laws on that subject."

The offence under the Act is now a cognizable offence and a great many sections have been brought in after consultation with all States and after close scrutiny of all existing measures in the States in order to see that it becomes easier for the State Governments to deal with companies or individuals who go in for terrible crime of adulterating food because it is a crime against humanity to adulterate food. This Act will go a long way towards checking the evil or at any rate giving the State Government means to check the cvil. Though legislation alone cannot got rid of dishonesty, deterrent punishment does have some effect.1

16. Prior Law. Before this Act was placed on the Statute Book practically all the units of the Indian Union had legislation to prevent food dulteration, the earliest being U. P. Act (VI of 1912) and the latest that of Orissa (X of 1938).

State Act. (1) The Assam Pure Food Act, 1932 (IV of 1938). No amendments up to 1940. Deals with sale, analysis inspection and seizure of food.

- (2) The Bengal Food Adulteration Act, 1919 VI of 1919), provides for the above and also declaration of normal constituents of any food.
- (3) The Calcatta Municipal Act, 1923 (B-ng d Act III of 1923). Deals with the sale of food, drugs and milk supply.
- (4) The Bengal Food Adulteration (Amendment) Act, 1925 (V of 1925).
  - (5) The Bengal Food Adulteration (Amendment) Act, 1930 (V of 1930).
- (6) The Bihar and Orissa Prevention of Adulteration Act, 1919 (2 of 1919).
- (7) The Bihar and Orissa Food Adulteration Amadment Act, 1923 (4 of 1923).
  - (8) The Bombay Prevention of Adulteration Act, 1925 (V of 1925).
- (9) The Bombay Prevention of Adulteration (Amundment) Act, 1935 (23 of 1935).
  - (10) The Central Provinces Prevention of Adulteration Act, 1919 (11 of
- 1919). (11) The Central Provinces Prevention of Adulte, ation (Amendment) Act, 1928 (V of 1928).
  - (12) The Madras Prevention of Adulteration Act, 1918 (III of 1918). (13) The Madras Prevention of Adulteration (Amendment) Act, 1223 111
- of 1928). (14) The Madras Prevention of Adulteration (Amendment) Act, 1932 (III of 1932).

<sup>1.</sup> See Parliamentary Debates, Rajya Sabha, Vol. VII, No. 8, dated 1st September,

- (15) The Orissa Prevention of Adulteration and Control of Sale of Food Act, 1938 (X of 1938).
  - (16) The Punjab Pure Food Act, 1929 (VIII of 1929).
- (17) The United Provinces Prevention of Adulteration Act, 1912 (VI of 1912).
  - (18) The United Provinces Act I of 1916. (19) The United Provinces Act II of 1930. (20) The United Provinces Act XIII of 1932.
  - (21) The U. P. Pure Foods Act, 1950 (32 of 1950).

There was no uniformity in these laws and what was more, the punishments provided were inadequate. In many of these Acts in actual operation great loopholes were found and the law was not so tight and comprehensive as it is now.

The Punjab Pure Food Act, 1929 and the Punjab Pure Food Rules were extended to the Union territory of Delhi by virtue of Sec. 2 of the Part C States (Laws) Act, 1950 which reads as under:

Power to extend enactment to certain Part C States. The Central Government may, by notification in the official Gazette, extend to the Union territory of Delhi, Himachal Pradesh, Manipur or Tripura or to any part of such territory, with restrictions and modifications as it thinks fit, any enactment which is in force in a State at the date of the notification, and provision may be made in any enactment so extended for the repeal or amendment of any corresponding law (other than the Central Act) which is for the time being applicable to that Union territory."

The extension of the Act and the Rules to the Union territory of Delhi was notified in the official Gazette (vide Government of India, Department of Education, Health and Lands Notification No. F-117/32-Home, dated 9th June, 1932) and sanctioned by the Chief Commissioner (vide Notification No. B-38-32/Home, dated 21st June, 1932 and subsequent Notification No. B-883-2 Home, dated 15th August, 1932 and 1032-Home, dated 6th February, 1935).

By the enactment of the Prevention of Food Adulteration Act, 1954 (XXXVII of 1954) all enactments (made or extended) and the rules framed thereunder by the different States stand cancelled and this Central Act will be the guiding authority in all States also.

- 17. The Prevention of Food Adulteration Act, 1954. In the Bill No. 101 of 1952, the short title was "The Food Adulteration Act." The Select Committee to which the Bill was referred recommended that the short title should be changed to "The Prevention of Food Adulteration Act.2"
- 18. Scope and object. The object of the Central Prevention of Food Adulteration Act is to prevent adulteration and misbranding as defined therein. The provisions of the Act are directed for the purpose of securing purity of food and to inform purchasers of what they are buying and they toust be construed to effect such purpose. The object of the Prevention of Food Adulteration Act, 1954, appears to be to provide for adequate pun shment of food adulterators and to make definition of the offence so comprehensive as tomake it impossible for them to escape on technical grounds. No piece of legislation can be perfect or be so all-embracing as to provide for all cases of its infringement but all that could be done appears to have been done so far

<sup>1.</sup> For the Bill see Gazette of India, Pt. II. Sec.

II. dated 15th November, 1932. For a report of the Committee see Court of India, Extraudinary, in Part II,

Sec. II, dated 9th February, 1953. 3. See Parliamentary Debates, Rajya Sabba, Vol. VII, No. 8, dated 1st September, 1954. p. 1985.

The Prevention of Food Adulteration Act, 1954, makes it penal to sell adulterated articles. It does not excuse the offence on the ground that the purchaser knew that what he was purchasing was not pure foodstuff. The Act was intended to protect the public from using adulterated articles and therefore it has made it penal to sell these adulterated articles to persons irrespective of the fact that the purchaser knew the articles to be adulterated or otherwise. Articles of food cannot be adulterated and sold in the market with the publication of the fact that they are adulterated.

- 19. Duty of Courts. The primary purpose of the Parliament in enacting the Prevention of Food Adulteration Act was to prevent injury to the public health by sale of misbranded and adulterated foods; and if this purpose has been effected by plain and unambiguous language and the Act is within the power of the Parliament, the only duty of the Courts is to give effect to according to its terms.
- 20. Extent of operation of Act. The Act extends to whole of India except the State of Jummu and Kashmir. The State of Jummu and Kashmir has exacted separate legislation and rules for the prevention of food adulteration.
- 21. India. Article 1 of the Constitution of India defines "India" thus:
  - (1) "India, that is Bharat, shall be a Union of States.
  - (2) The States and the territories thereof shall be the States, and their territories specified in Parts A, B and C of the First Schedule.
  - (3) The territory of India shall comprise:
    - (a) the territories of the States;
    - (b) the territories specified in Part D of the First Schedule; and
    - (c) such other territories as may be acquired."

Before the Indian Independence Act came into force on the 15th August 1947, India was divided into 1) British India consisting of nine Governor's Provinces and five Chief Commissioner's Provinces and (2) Indian States numbering about 651. The Indian States were scattered throughout India and the total area of these States was roughly half of the total area of India and their population was about 27 per cent of the total population of India. These Indian States were ruled by Sovereign princes who were directly under the paramountcy of His Majesty the King of England. The Central Legislature of British India had no legislative power at all in respect of these States and the British Indian Laws had no direct application to them. The Indian Independence Act ushered into existence two separate Dominions, (1) Pakistan comprising the former British Indian Provinces of Sind, Baluchistan, West Punjab, North-West Frontier Provinces and East Bengal, and (2) India comprising of the rest of British India. On the passing of the Indian Independence Act the paramountcy terminated, but their relation with the Central Authority in India was left undefined. On the attainment of Dominion Status, India thus had within her territorial limits all these semi-independent States with monarchic form of Government. The problem before the Centeral Government was how these Indian States could be brought into the framework of a United India politically and administratively so as to mould India into a single sovereign Democratic Republic. It was indeed a problem of great complexity almost without parallel. But thanks to the statesmanship of the Late Sardar Vallabhbhai Patel, the then Home Minister, by a rapid process of accession and merger the Indian States lying in the Dominion of India became integral units of the Indian Union. Now India,

<sup>1.</sup> Richal Chandra Dutta v. Purna Chandra Ghosh, 1930 Cal. 273.

that is Bharat is a Union of States. These States were classified into three categories, namely specified in Part A, in Part B and in Part C of the First Schedule to the Constitution.

The States in Part A were Andhra, Assam, Bihar, Bombay, Madhya Pradesh (formerly Central Provinces and Berur), Madras, Orissa, Punjab, (East Punjab), Uttar Prad sh (formerly United Provinces of Agra and Oudh),

and West Bengal, which were all Governor's Provinces.

The States in Part B were Hyderabad, Jummu and Kashmir, Madhya Bharat 'Central India, Gwalior, Indore, etc.), Mysore, Patiala and East Punjab States Union, Rajasthan (Jaipur, Jodhpur, Udaipur, etc.), Saurashtra, Travancore-Cochin and Vindhya Pradesh (Rewa, Panna, etc.). It will be seen that they were all former Indian States or Unions of States which had acceled and been merged in India. Madhya Bharat included the former Chief Commissioner's Province of Panth Piploda.

The States in Part C were Ajmer, Bhopal, Bilaspore, Cooch- Behar, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur and Tripura. Of these Ajmer, Coorg and Delhi were formerly Chief Commissioner's Provinces and the rest were administered as if they were Chief Commissioner's Provinces.

Part D of the Schedule consisted of the Andaman and Nicobar

On the 1st November, 1956, the day appointed under the States Reorganisation Act a great movement for the reorganisation of the States on the basis of linguistic principles came to fruition. That day witnessed the birth of some new States and numerous other changes in the map of India. The new States that came into existence that day were Bombay, Kerala, Madhya Prahesh, Madras, Punjab and Rajasthan all of which with the exemption of Bombay and Punjab were unilingual States. That day also saw the disappearance of the Hyderabad State which had existed for nearly two centuries and a half. That day also saw the complete disappearance of Part C States some of them were merged into the neighbouring States and some of them were renamed Union territories. The reorganisation plan carried forward the great work of integration which the great leader of National Unity, Sardar Vallabhbhai Patel had begun.

In the First Schedule to the Constitution for Part A, Part B and Part C the following parts were substituted by Sec. 12 of the States Reorganisation

Act, 1956, which came into force on the 1st November, 1956:

#### PART A STATES

Name	Territories
1. Andhra Pradesh	The territories specified in sub-section (1) of Sec. 3 of the Andhra Pradesh State Act, 1953, and the territories specified in subsection (1) of Sec. 3 of the State Reorgainsation Act, 1956.
2. *Assam	The territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal Areas, but excluding the territories specified in the Schedule to the Assam (Alteration of Boundaries) Act, 1951.

<sup>\*</sup>A new administrative unit in the State of Asun by the name of Naga Hulls Luchsaug Area comp ising the tribal areas which were known as the Naga

Hills District and Tuensang Frontier Division of North-East Frontier Agency was formed by the Naga Hills Tuensang Area Act, 1957.

	Name	Territories
3.	Bihar	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Bihar or were being administered as if they formed
4.	Bombay	part of that Province.  The territories specified in sub-section (1) of Sec. 8 of the States Reorganisation Act, 1956.
5.	Kerala	The territories specified in sub-section (1) of Sec. 5 of the States Reorganisation Act, 1956.
6.	Madhya Pradesh	The territories specified in sub-section (1) of Sec. 8 of the States Reorganisation Act, 1956.
7.	Madras	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Madras or were being administered as if they formed part of that Province and the territories specified in Sec. 4 of the States Reorganisation Act, 1956, but excluding the territories specified in sub-section (1) of Sec. 2 and subsection (1) of Sec. 4 of the Andhra State Act, 1953, and the territories specified in clause (b) of sub-section (1) of Sec. 5, Sec. 6 and clause (d) of sub-section (1) of Sec. 7 of the States Reorganisation Act, 1956.
8.	Mysore	The territories specified in sub-section (1) of Sec. 7 of the States Reorganisation Act, 1956.
9.	Orissa	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Orissa or were being administered as if they formed part of that Province.
10.	Punjab	The territories specified in Sec. 11 of the States Reorganisation Act, 1956.
11.	Rajasthan	The territories specified in Sec. 10 of the States Reorganisation Act, 1956.
12.	Uttar Pradesh	The territories which immediately before the commencement of this Constitution were either comprised in the Province known as the United Provinces or were being administered as if they formed part of that Province.
13.	West Bengal	The territories which immediately before the commencement of this Constitution were either comprised in the Province of West Bengal or were being administered as if they formed part of that Province and the territory of Chanderragore as defined in clause (c) of Sec. 2 of the Chandernagore (Merger) Act, 1954.

## PART B STATES

Name	Territories
1. Jammu and Kashm	
1. Delhi	comprised in the Indian State of Jammu and Kashmir.  PART C STATES  The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of Delhi.
2. Himachal Pradesh	The territories which immediately before the commencement of the Himachal Pradesh and Bilaspur (New State) Act, 1954, were comprised in the States of Himachal Pradesh and Bilaspur.
3. Manipur	The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Manipur.
4. Tripura	The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Tripura.
5. The Laccadive, Minicov and Ami Islands.	The territory specified in Sec. 6 of the ndivi States Reorganisation Act, 1956.

Barring the State of Jammu and Kashmir the Prevention of Food Adulteration Act, 1954, extends to all the States specified in the First Schedule of the Constitution of India.

22. Non-applicability of the Act to the State of Jammu and Kashmir. The State of Jammu and Kashmir forms a part of territory of India. At the time of the making of Constitution of India it was included in the list of States in Part B of the First Schedule to the Constitution. But though the State was included as a Part B State its status markedly differed from other States which immediately before the 1st November, 1955, were comprised in Part B States. All the provisions of the Constitution applicable to territories which immediately before the 1st November, 1956, were comprised in Part B States were not extended to Jammu and Kashmir. Owing to special terms and conditions of its admission into the Indian Union the Constitution of India provided that only Arts. 1 and 370 of the Constitution would apply of their own force to Jammu and Kashmir. In exercise of the powers conferred by clause (1) of Art. 320 of the Constitution, the President with the concurrence of the Government of the States of Jammu and Kashmir made the Constitution (Application to Jammu and Kashmir) Order, 1954, specifying the matters with respect to which Parliament of India would be competent to make laws for Jammu and Kashmir. The Articles of the Consstitution which in addition to Articles 1 and 370 shall apply in relation to the State of Jammu and Kashmir are mentioned in the Constitution (Application 10 Jammu and Kashmir) Order, 1954. According to this Order the jurisdiction of the Union now extends to all Union subjects included in List I of the Seventh Schedule of the Constitution (subject to certain modifications). According to the Constitution (Application to Jammu and Kashmir) Order, 1904, the jurisdiction of the Indian Union does not extend to State and concurrent subjects included in Lists II and III of the Seventh Schedule of the Constitution. As item 18 of List III (Concurrent List) deals with the subject of adulteration of foodstuffs and other goods the extent clause of the Central Prevention of Food Adulteration Act, 1954, as under:

> "It extends to whole of India except the State of Jammu and Kashmir,"

Date of operation of Act. The Act came into operation in the whole of India except the State of Jammu and Kashmir on the 1st of June. 1955.1

24. Absolute duty and liability of master or proprietor, etc. Offences created by the Prevention of Corruption Act are within the limited and exceptional class of offences which can be held to be committed without a guilty mind. The offender will be amenable to the penalty enjoined by the law without proof that he had a guilty mind in doing the act. So also are r ised exceptions to the genuine rule of criminal law that a master is no: responsible for the unauthorised acts of his servant. The liability of the master is insisted upon because otherwise every master will be able to set as nought the entire series of special acts by employing servants ad hoc.2 The following comment in Bell's Sale of Food and Drugs' will repay perusal.

Generally, the offences created by the Food and Drugs Act, Weights and Measures Acts and other statutes are in terms of absolute prohibition, and the offender is liable, without proof of guilty knowledge. So also are raised exceptions to the general rule of law that a master is not criminally responsible for the acts of his servants, if they are done without his knowledge or

authority, express or implied.4

In Pearks, Gunston & Tee Ltd. v. Wards, a food and drugs case for selling food to the prejudice of the purchaser, the principle and the reason for the exception to the general rule that mens rea is an essential ingredient of a criminal offence was thus stated by Channell, J., "By the general principles of criminal law, if a matter is made a criminal offence, it is essential that there should be something in the nature of mens rea, and, therefore.....a master (can not) be liable criminally for an offence commit ed by his servant. But there are exceptions to this rule in the case of quasi-c iminal offences, as they may be termed, that is to say, where certain acts are forbidden by law under a penalty, possibly even under a personal penalty, such as imprisonment, at any rate in default of payment of a fine and the reason for this is, that the legislation has thought it so important to prevent the particular act from being committed that it absolutely forbids it to be done; and it it is done the offender is criminally liable to a penalty whether he had any meny rea or not, he intended to commit a breach of the law. Where the act is of this character then the master, who, in fact, has done the forbidden thing through his servant is responsible and is liable. There is no reason why he should not be, because the very object of the Legislature was to forbid the thing absolutely. It seems to me that exactly the same principle applies in the case of a corporation.65

Rice Mill, Ariyur, 1953 Mad. 156.

13th Ed., pp. 25-27.

Harrison v. Leaper, (1862) 26 J. P. 373:

14 Digest 41, 104; Core v. James, (1871)

L. R. 7 Q. B. 135: 25 Digest 117,

See Government of India, Ministry of Health Notification No. F-9-41 55-D, dated 9th May, 1955; Gazette of India, Pt. II, Section 3, dated 21st May, 1955.
 In re Kasi Raj v. Proprietor, Thirweswarar Proceedings of the Proprietor of the Prop

<sup>5. (1902) 2</sup> K. B. 1: 66 J. P. 774 : 14 Digest 40, 102.

<sup>6.</sup> Cf. the following passage from the Spirit of the Common Law by Dean Roscoe Pound: "Such statutes are not meant to punish the vicious will but to put pressure upon the thoughtless and inefficient to do their whole duty in the interest of public health or safety or morals."

In another leading case on liability in this type of offence, Mousel Brother, 1.1d. v. London and North Western Railwry1, the principal involved was stated by Atkin, J., in the following terms: "I think that the authorities cited by my Lord make it plain that while prime facie a principal is not to be made criminally responsible for the acts of his servants, yet the Legislature may prohibit an act or enforce a duty in such words as to make the prohibition or the duty absolute; in which case the principal is liable if the act is in fact done by his servants. To ascertain whether a particular Act of Parliament has that effect or not regard must be had to the object of the statute, to the words used, the nature of the duty laid down, the person upon whom it is imposed, the person by whom it would in ordinary circumstances be performed, and the person upon whom the penalty is imposed." The same rule applies where the master is a limited company.2

In Linnett v. Commissioner2 of Metropolitan Police,3 Lord Goddard, C. J., said that the principle in Mousell Brothers Ltd. v. London and North-Western Railway1, as set out in the various decisions thereon "does not depend upon the legal relationship existing between muster and servant or between principal and agent; it depends on the fact that the person who is responsible in law, as for example, a licensee under the Licensing Acts, has chosen to delegate his duties, powers and authority to another."

Thus if a man's wife manages his business in his absence, and sells an adulterated article, the husband in this case becomes criminally responsible in respect of the sale as if it had been executed by his servant or agent. If this were otherwise, tradesmen or other persons could always evade the law.

But there must have been a delegation by one person, of his duties, powers and authority, to another.4 In Brown v. Foot5 the appellant was a retail milk seller, and it was his practice, on receiving the cans of milk from the county, to take a sample from each can before it was sent out for sale. He also published a warning to his servants who sold the milk from the various cans, that any servant whose can of milk did not correspond with the sample taken from it would be liable to dismissal. One of his servants admitted that he had watered his can previously to selling some of its contents to an inspector, and it was hald by Hawkins and Wills, JJ., that the appellant (the master) had been rightly convicted under this section for selling adulterated milk when, as has been seen, he had not only expressly forbidden his servants to adulterate, but had also taken special precautions to prevent them from doing so. In the course of his judgment Wills, J., said: "The sarvant was admittedly empoyled in the general business of the appellant in selling milk by retail ..... Therefore the appellant must see that the servant within the scope of his authority does not contravene the Act."

The above case was followed and approved in Parker v. Alder<sup>6</sup>, in which a dairy farmer at Wantage contracted to supply pure milk to be delivered to the purchaser at Paddington Station. In accordance with the contract, he delivered a churn of pure and unadulterated milk to the Great Western

<sup>1. (1917) 3</sup> K. B. 836: 81 J. P. 305: 14

Digest 44, 133. See Griffiths v. Studebakers Ltd., (1924) 1 K. B. 102: 87 J. P. 199: 31 Digest 153, 1202; Pearks, Gunston & Tee Ltd. v. Ward, supra; Sec also Sherras v. D. Rutzen, (1895) 1 Q. B. 918: 59 J. P. 440: 14 Digest 38, 80; R. v. I. C. R. H. alige Lid., (1944) K. B. 551: (1944) J. All. E. R. 691: 108 J. P. 191: 2nd

Digest Supp. R. v. Dolman, (1949) 1 All. E. R. 813: 2nd Digest Supp. (1946) K. B. 290 at p. 294. Cf. Allen v. Whitehead, (1930) 1 K. B. 211: 94 J. P. 17; Digest Supp. Griffichs v. Studebakers Ltd. sufna: Linnelt v. Commissioner at Police when Commissioner of Police, supra.

<sup>(1892) 61</sup> L. J. M. C. 110: 25 Digest 82 (1899) 1 Q. B. 20: 25 Digest 81, 97,

Railway at the local station for conveyance to Paddington. On its arrival at Paddington the milk was found to contain nine per cent of added water. The Magistrate found as fact that the water had been added unlawfully during the railway journey by some one without the knowledge or authority of, and without any default or negligence on the part of, the seller or any servant of his: Held, by Lord Russell of Killowen, G. J., and Wills, J., that the seller was liable to conviction for an offence under the Act, and Lord Russell, in the course of his judgment, said: "Assuming that the respondent (the seller) was entirely innocent morally, and, had no means of protecting himself from the adulteration of this milk in the course of transit, has he committed an offence against these Acts? I think he has ...... It has been decided in Brown v. Foot1, in the clearest manner that an innocent vendor of milk is undoubtedly liable for the unauthorised act of his servant in adulterating it..... and there is really no material difference between that case and this, because a vendor is no more liable to prevent the adulteration by a dishonest servant than he is to prevent adulteration by strangers such as the servants of the railway company. This is one of the class of eases in which the Legislature has, in effect, determined that meas ratis not necessary to constitute the offence". This case was followed in Andrew v. Luckin<sup>2</sup>, where the Justices found that the milk was genuine when delivered to the railway company, but no evidence was given that it had not been interfered with on the journey.

Houghton v. Mundy, is another case of a master being held liable for an act of his servant committed against express orders.

Kearly and Tonge v. Tyler4, in which a different view was taken, is overruled by the above cases5. In Quality Dairies (York) Ltd. v. Pedley<sup>6</sup>, a breach of regulation ?6 of the Milk and Dairies Regulations, 1926, which provided that every dairy farmer or distributor should ensure that every vessel used for containing milk should be in a state of thorough cleanliness immediately before use by him, was in question. It was held that the Regulation imposed an absolute duty<sup>7</sup> and where a distributor engaged a subcontractor to buy bottle and deliver milk required by his customers, and the sub-contractor put the milk in bottles which were not in a state of thorough cleanliness immediately before use, the distributor was guilty of the offence8 for liability of master as user of a vehicle used by his servant.

It has been held in Scotland that if the servant in making the sale is acting altogether outside the scope of his authority the master is not liable9; where the servant was told to deliver milk to customers who had previously ordered it, but sold part of it to an inspector on the way. This case was followed in Wilson v. Fleming, 10 which also decided that in Scotland if the master is prosecuted in respect of a sale by his servant, the complaint must state in terms that the sale was by the servant and not by the master.

Similarly, in England, in the relationship of master and servant, or principal and agent, in these cases, it is necessary that the servant was acting within the scope of his employment for the master to be liable. 11 Where

<sup>(1882) 61</sup> L.J.M.C. 110: 25 Digest 82, 104.

<sup>(1917) 87</sup> L. J. K. B. 507: 25 Digest 81, 2.

<sup>(1910), 103</sup> L. T. 60; (1891) 60 L. J. M. C. 159; 25 Digest 4. 82, 108.

See also Farley v. Higginbotham, (1898) 42

Sol. Jo. (Dic).
6. (1952) 1 K.B. 275: (1952) 1 All E. R. 380: 116 J. P. 123: 3rd Digest Supp.
7. (If. Provincial Motor Cab Co. Ltd. v. Dunning.

<sup>(1909) 2</sup> K. B. 599: 73 J. P. 387: 14

Digest 91, 611.

See also James & Sons. Ltd. v. Smee, (1955) 1 Q. B. 78: (1954) 3 All E.R. 273: 118 J. P. 536: 3rd Digest Supp. See Lindsay v. Dempster, (1912) S. C. (J).

<sup>110: 25</sup> Digest 82, 108 ii. 10. (1913) 51 S. L. R. 72: 34 Digest 152.

<sup>11.</sup> Star Cinema (Shepherd's Bush) Ltd. v Baker, (1921) 86 J. P. 47: 14 Digest 17, 151; Baker v. Levinson, (1951) 1 K. B. 342: (1950) 2 All E. R. 825: 114 J. P. 545: 2nd Digest Supp.

the master-servant or principal-agent relationship does not exist, a person is not liable for the act of a person over whem he had no control or respons-

ibility.1

Therefore, if the making of the sale (and not merely as in Parker v. Alder? the act or omission resulting in the article not coming up to standard) is entirely outside the scope of the servant's authority there is no liability. In Elder v. Bishop Auckland Co-operative Society Limited,3 milk was consigned to the lociety by train. On arrival it was taken away by a servant of the society, whose orders were to sell to no one except a member of the society who had ordered it beforehand. He sold a sample to an in pector, and the court held that he had sufficient authority to sell, though a limited one. But in Whittacker v. Forshaw<sup>4</sup>, a farmer had a constact to deliver a pint of milk to a customer's house every morning. He sent it in a can, carried by his daughter, aged thirteen. Being stopped by an inspector, who demanded a Lint of milk, she was afraid to reface, and gave it to him and received payment. The Justices held (inter alia) that she had no authority to sell but only to deliver, and the mojerity of the Court held that they were entitled so to hold. Lindsay v. Dempster was followed in the latter case, and distinguished in the former.

O'Reilly v. Imperial Chemical Industries Ltd.5 a lorry driver was employed by A, but worked continuously carrying loads for and under the control of B. The Court held that a relationship of employer-empleyee pro hac vice did not

exist between B and the lorry-driver.6

As to admissions by servants or agents the principle is that a person is prima facie liable for what is done under his presumed authority (for which, see Stone's Justices Manual, latest edition.)

As to corporations, it was held in Edward's Creameries Ltd. v. Smith7 that an offence by an incorporated body must be committed by its servant, and

the explanation of the servant is the explanation of his employers.

The point has also arisen in the county. In the case of Queen Empress v. Tyab Ali.8 the accused kept a shop under a licence granted to him for the sale of arms, ammunition any military stores. He did not himself sell the goods, but placed a man in charge of the shop for the purpose of selling the This man sold certain military stores without previously ascertaining that the persons to whom he sold them were legally authorised to possess the same. When prosecuted under Sec. 22 of the Indian Arms Act (XI of 1878) which provides as follows:

Whoever knowingly purchases any arms, ammunition or military stores from any person not licensed or authorised under the proviso to Sec. 5 to sell the same; or delivers any arms, ammunition or military stores into the possession of any person without previously ascertaining that such person is legally authorised to possess the same, shall be punished with imprisonment for a term which may extend to six months or with fine which may

extend to five hundred rupees, or with both-

the accused pleaded that the goods were sold without his knowledge and consent and that he was not criminally liable for the act of his servant. Parsons, J., held:

<sup>1.</sup> Reynolds v.G. H. Austin & Sons Ltd. (1951) 2 K. B. 135: (1951) 1 All E. R. 600; 115 J. P. 192: 2nd Digest Supp.

<sup>(1917) 36</sup> L. J. K. B. 1412: 25 Digest

<sup>4. (1919) 2</sup> K. B. 419: 25 Digest \$2, 108.

<sup>5. (1955) 3</sup> All E. R. 382.

<sup>6.</sup> See also Mersey Ducks and Harbour Board v. Coggins and Cirgiths Liverpet Ltd. 1947) A. C. 1: (1946) 2 All E. R. 315: 62 T. L. R. 533: 2nd Digest Supp.

<sup>7. (1922) 86</sup> J. P. 155: 25 Digest 131, 512. 5. I. L. R. 24 Bom. 423.

It is not a question of intention, of mens rea or of knowledge; it is the delivery which the Act makes penal, and the delivery by the manager is clearly in this case a delivery by the licensee.

The learned Judge went on to hold that the rule whatever a servant does in the course of his employment with which he is entrusted

and as a part of it is the master's act.

which is of general application so far as civil liability goes, "i: applicable to certain criminal proceedings also."

In Behiri Lal v. King Emperor a case under the Ferries Act (XVII of 1878), Sec. 22, the lessees of Singhi Rampore Ferry who were not present and who took no part in the extortion were prosecuted for the offence as their servants in contravention of the law extorted unauthorised and excessive

tolls from certain passengers. Tudball, J., held that—
The servants in doing this act did something which was outside the scope of their employment. In this very offence there is decidedly a mens rea, a criminal intent. If it were an act done by the servants within the scope of their employment, then the conviction of the master would in the present case be a good one

and held that the conviction was bad. It must, however, be noted that in that case the servants extorted unauthorised and excessive tolls not for, and on behalf of, their masters but for their own benefit and appropriated the amount themselves. That case is, therefore, distinguishable.

In Emperor v. Baba Lal,2 a Division Bench of this Court held that where the servant of a licensed vendor of opium, in the course of his employment as such servant, sold opium to a person under the age of fourteen years, the licensed vendor also was liable under Sec. 9 of the Opium Act, even though he might not have been aware of the sale. Their Lordships relied on the case of Queen Empress v. Tyab Ali referred to above, and held:

The licensee holds his shop on certain conditions. One of those conditions has been broken by his servant; and the mere act of selling opium in contravention of the condition of his licence constitutes the offence. It is one of those cases in which the act of a servant is the act of the master.

In our opinion the conviction of the master is legal.

But in Sheo Ram v. The Crown<sup>3</sup>, Moti Sagar, J., held in a case under the Punjab Canals and Drainage Act (VIII of 1873) that there being no evidence that the accused had a hand in opening the outlet in question, they could not be convicted. He said:

> In fact the learned District Magistrate himself observes in his judgment that it is difficult to obtain evidence in such cases and remarks further that if the agents of the petitioners broke the rule the principals are undoubtedly guilty. I do not think there is any warrant for such a proposition, and in the absence of any evidence to the contrary I must hold that the accused are not guilty of the offence of which they have been charged.

The language of the particular Act is not quoted and there is no further discussion of the point in the judgment. The matter was considered at some length by the Nagpur Judicial Commissioner's Court in Saigned Rahmin v. Emperor4. After having discussed the general principle that no one is 108ponsible for the criminal act done by another it is laid down by Stanyon, A. J. C., that in some cases criminal liability is imposed by Statute upon the master as regards the acts or omissions of his ervants, both in England and

<sup>1. 8</sup> A. L. J. 1324. 2. I. L. R. 34 All. 319,

<sup>3.</sup> A. I. R. 1923 Lah. 603.

<sup>4. 29</sup> I. C. 325.

in India, and various instances are given of the application of this exception. The principle deduced from the various cases cited is laid down in these words:

The principle governing all these cases is that by Statute or by contractual undertaking there is some public duty legally binding upon the master for the breach of which a criminal liability is imposed on him, whether such breach is committed by him personally or by persons whom he chooses to employ in the discharge of that obligation subject to this that the acts of the servants fall within the scope of their authority."

Malik, J. also during the course of his lucid judgment in Harish Chandra Bagla v. Emperor, had the following remarks to make:

"As a general proposition of law it cannot be doubted that the master is not liable for the criminal acts of his servants not done at his instigation. The general rule no doubt is that there is no criminal liability of the principal for any act or omission of his agent unless the principal himself takes part in, authorises, or conneces at, such act or omission. A man cannot be guilty by his agent of an illegal act and be held responsible for that act, unless he has given the agent authority, directly or indirectly, to do that illegal act. No one who is an agent for a legal purpose can make the principal responsible for an illegal act, unless the principal has in some way, directly or indirectly, authorised it. The reason for the rule is obvious. It is a general principal of criminal law that there must be some blameworthy condition of mind or mens rea..... there may be negligence, malice, guilty knowledge or the like. The other well-know principle is that there is no vicarious liability in criminal law; the condition of mind of the servant is not to be imported to the master. In a civil action the master is liable for damages for injury caused to another by the negligence of the servant while acting within the scope of his authority or in the course of his employment. But the master is not criminally responsible for his servant's negligence and still less for an offence depending on the servant's malice.

These general principles apply to all offences though it is in the power of the Legislature, if it so pleases, to enact that a man may be convicted and punished, although there was no blameworthy condition of mind. But this exception would have to be made out convincingly from the language of the statutes; as it cannot lightly be presumed that the Legislature intended that A should be punished for the fault of B.

Besides these statutory offences where the statute, expressly or by necessary implication, has made the master criminally responsible for the acts or omissions of the servant or agent, common law, in England, recognised only one exception, that is, of a public nuisance. The reason for this exception is rather instructive. For public nuisances, no civil action could be brought in England and the only remedy was by an indictment and the master could always escape liability by setting a servant upon work that may result in a nuisance.

<sup>1. 1945</sup> All. 10: 1945 A. L. J. 151:1945 A. W. R. (H. C.) 160: 1945 All. 540.

The question whether the statute has by necessary implication made the master liable depends upon various considerations. Primarily it depends upon the language of the statute, the words used, then its scope, its object, the nature of the duty laid down and whether it intends to impose a public duty binding on the master apart from any question of knowledge or frame of his mind. In many such cases the provision of the statute would be rendered nugatory if it be held that the prohibition or the duty imposed was not absolute."

Definitions. quires,-

2. In this Act, unless the context otherwise re-(i) "adulterated"—an article of food shall be deemed to

be adulterated—

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(b) if the article contains any other substance which affects or if the article is so processed as to affect injuriously the nature, substance or quali-

ty thereof;

(c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof;

(d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the

nature, substance or quality thereof;

(e) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health;

- (f) if the article consists wholly or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance or is insectinfested or is otherwise unfit for human consumption;
- (g) if the article is obtained from a diseased animal;
- (h) if the article contains any poisonous or other ingredient which renders it injurious to health;
- (i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health:
- (j) if any colouring matter other than that prescribed in respect thereof and in amounts not within the

prescribed limits of variability is present in the article;

- (k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;
- (1) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability;
- (ii) "Central Food Laboratory" means any laboratory or institute established or specified under Sec. 4;
- (iii) "Committee" means the Central Committee for Food Standards constituted under Sec. 3;
- (iv) "Director of the Central Food Laboratory" means the person appointed by the Central Government by notification in the official Gazette as the Director of the Central Food Laboratory and includes any person appointed by the Central Government in like manner to perform all or any of the functions of the Director under this Act;
- (v) "food" means any article used as food or drink for human consumption other than drugs and water and includes—
  - (a) any article which ordinarily enters into, or is used in the composition or preparation of human food, and
  - (b) any flavouring matter or condiments;
  - (vi) "Food (Health) Authority" means the Director of Medical and Health Services or the Chief Officer in charge of Health administration in a State by whatever name he is called;
  - (vii) "local area" means any area, whether urban or rural, declared by the State Government, by notification in the official Gazette, to be local area for the purposes of this Act;
- (viii) "local authority" means in the case of-
  - (1) a local area which is—
  - (a) a municipality, the municipal board or municipal corporation;
  - (b) a cantonment, the cantonment authority;

(c) a notified area, the notified area committee;

(2) any other local area, such authority as may be prescribed by the State Government under this Act:

(ix) "misbranded"—an article of food shall be deemed

to be misbranded--

(a) if it is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character;

(b) if it is falsely stated to be the product of any place or country;

- (c) if it is sold by a name which belongs to another article of food;
- (d) if it is so coloured. flavoured or coated, powdered or polished that the fact that the article is damaged is concealed or if the article is made to appear better or of greater value than it really is;
- (e) if false claims are made for it upon the label or otherwise;
- (f) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act;
- (g) if the package containing it or the label on the package bears any statement, design or device regarding ingredients or the substances contained therein, which is false or misleading in any material particular; or if the package is otherwise deceptive with respect to its contents;
- (h) if the package containing it or the label on the package bear the name of a fictitious individual or company as the manufacturer or producer of the article;
- (i) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin, mineral, or other dietary properties in order sufficiently to inform its purchaser as to its value for such uses;

- (i) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirements of this Act or rules made thereunder;
- (k) if it is not labelled in accordance with the requirements of this Act or rules made thereunder;
- (x) "package" means a box, bottle, caske t, tin, barrel, case, receptacle, sack, bag, wrapper or other thing in which an article of food is placed or packed;
- (xi) "premises" include any shop, stall or place where any article of food is sold or manufactured or stored for sale;
- (xii) "prescribed" means prescribed by rules made under this Act;
- (xiii) "sale" with the grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article;
- (xiv) "sample" means a sample of any article of food taken under the provisions of this Act or of any rules made thereunder;
- (xv) the words "unwholesome" and "noxious" when used in relation to an article of food mean respectively that the article is harmful to health or repugnant to human use.

## SYNOPSIS

1. Clause (1); English Law.

2. "Adulterated".

-Moisture above averge.

-Injurious quality.

3. Prejudice of purchaser.

- 4. Position under U. P. Adulteration of Food Act, 1912 (Repealed by U. P. Pure Food Act, 1950).
- 5. Notice to purchaser.
- 6. Notice must be clear and unequivocal.

- 7. Cases of fraud.
- 8. Nature, substance and quality of article demanded.
- 9. Absence of statutory standard.
  - Nature of article demanded: Article wholly different.
    - 'Savin' for 'saffron'. — Tapioca for sago.
    - -Sardines in cotton-seed oil for sardines in olive oil.

'Quality' of article 11. demanded: commercial quality. 12.

Articles "demanded" : What is

13. Effect of provision in contract as to quality.

Article commonly assumed to contain 14. certain foreign matter not injurious.

Particular articles not of quality 15. demanded.

—Demarara sugar.

-Gin. -Lardine.

-Green Tea. -Marmalade.

-Preserved Peas.

—Butter.

-Margarine. -Mustard.

-Mustard oil.

-Milk. -Hot milk.

-Honey. - Coffee.

-Ghee.

-Wheat flour with mixture of 29.

-Mixing of inferior oil with 30. Clause (xiii). superior oil.

16. Injurious to health. Abstract from articles of food or 17.

parts thereof.

Adddition of poisonous substances. 18.

19. Colouring matters.

20. Clause (v) English liv.

-Food.

21. Question of fact.

-American Cases.

-Other definitions.

-Cooking as test.

-Victuals.

Food and drink distinguished.

-Maple Syrup.

-Similar definitions. -As including unground corn.

22. Chewing gum.

23. Wines, liquors or other excisable articles.

24. Mustard and linseed oils.

25. Fuel oil.

26. Kattha and pans.

27. Clause (ix).

-"Misbranded".

-Standard of comparison.

28. Labell.d.

-"Sealed." Meaning .--

Clause (x). -Package.

-Sale.

-Sale and agreement to sell.

-Exposing or offering for sale.

1. Clause (1): English Law. Section 1 of the English Food and Drugs Act, 1938, prohibits the addition of any substance to any food so as to render the food injurious to health or the addition of any substance to any drug so as to affect injuriously the quality or potency of the drug. Section 2 prohibits the abstraction of constituents from food without notice to the purchaser or even if there is notice, if the food after such abstraction does not comply with such regulations made under the Act. Section 3 prohibits the sale to the prejudice of the purchaser of any food or drug which is not of the nature, substance or quality of the food or drug demanded by the purchaser. Sections 1, 2 and 3 of the English Food and Drugs Act, 1938, run as under :

Section 1-Food and Drugs Act, 1938-Restrictions on the addition of other

substances to any food or drug:

(1) No person shall add, or direct or permit any other person to add-

(a) any substance to any food so as to render the food injurious to health; or

(b) any substance to any drug so as to affect injuriously the quality or protency of the drug,

with the intent that the food or drug may be sold in that state.

(2) No person shall sell, or have in his possession for the purpose of sale, any food or drug to which any substance has been so added.

(3) A person who contravenes any of the provisions of this section shall be guilty of an offence.

The expression "food" means any article used as food or drink for human consumption, other than drugs or water, and includes—

(a) any substance which is intended for use in the composition or

preparation of food;

(b) any flavouring matter or condiment; and (c) any colouring matter intended for use in food:

Provided that, notwithstanding anything in this definition, the addition of any colouring or flavouring matter or condiment to an article used as food or drink shall be deemed to be the addition of a substance to food.<sup>1</sup>

Section 2-Food and Drugs Act, 1938-Restrictions on the abstraction from

any food any constituent thereof:

(1) No person shall abstract, or direct or permit any other person to abstract, from any food any constituent thereof so as to affect injuriously the nature, substance or quality of the food with intent that it may be sold in its altered state—

(a) without notice to the purchaser of the alteration; or

- (b) whether with or without such notice, if in that state the food does not comply with any relevant provisions contained in regulations made under this Act for prescribing the composition of food.
- (-) A person who contravenes any of the provisions of this section shall be guilty of an offence.

Section 3—Food and Drugs Act, 1938—Prohibition against sale of any food or drug not of the nature, substance or quality demanded:

- (1) If a person sells to the prejudice of the purchaser any food or drug which is not of the nature, or not of the substance, or not of the quaity, of the food or drug demanded by the purchaser, he shall, subject to the provisions of the next succeeding section, be guilty of an offence.
- (2) Where regulations made under this Act contain provisions prescribing the composition of, or prohibiting or restricting the addition of any substance to, any food, a purchaser of that food shall, unless the contrary is proved, be deemed for the purposes of this section to to have demanded food complying with the provisions of the regulations.
- (3) In proceedings under this section, it shall not be a defence to allege that the purchaser brought for analysis or examination and therefore was not

prejudiced.

The adulteration of food and drugs may involve—

- (i) the addition of an ingredient not normally present in the article in question, which may or may not be harmful to the consumer;
- (ii) the abstraction of an ingredient normally present in the article, either in whole or in part;
- (iii) the substitution of a different article to that demanded by the
- (iv) the addition of a preservative to food in contravention of the special provisions relating to preservatives;

(v) the use of a label or description applicable to an article which is incorrect in any particular; or

(vi) the sale of an article the composition of which does not comply with a prescribed legal standard.

<sup>1.</sup> Section 100, Food and Drugs Act, 1938; 31 Halsbury's Statutes, 313.

"Adulterated". The definition of the word "adulterated" in Sec. 2 (1) has been made very comprehensive to embrace within its purview all persons who are so minded to adulterate various foods and drinks and it would be extremely difficult for the people who till adulterate foodstuffs to escape punishment. In the U. P. Act the definition of "adulterated" was "if the article sold by a vendor is not of the nature, substance or quality d manded by the purchaser .... But in this Act the words "and is to his prejudice" have been added. This will greatly facilitate the conviction of those people who will now be hauled up before the Court under this

There was another loophole in the U. P. Act. It was also in other parts like Bombay and Madras namely, that if a man said : "I am selling this adulterated stuff" no offence was made out at all. Now it has been completely stopped, that is to say, no man can store, sell or import any stuff which is adulterated and which is defined to be adulterated. The definition has been extended from cl. a) to cl. (l), that is to say, it includes articles which consist wholly or in part of any filthy, putrid, disgusting, rotten, etc. articles obtained from diseased animals, articles containing any poisonous or other ingredient and so on and so forth. The efore this is a very great improvement and the new prosecution that would launch will result in a very large number of convictions of those people who are caught in these nefarious activities.1

The Court is not justified in introducing as a test of liability the purpose for which adulteration was effected and further of importing into it the element of an intention to commit fraud. The material provisions do not postulate that for establishing the offence of adulteration it is either necessary to prove that the intention was to increase the bulk or measure or to debase the quality or that the intention was of a fraudulent nature.2

In Rakhal Chandra v. Purna Chandra,3 it was held that the sale of an article of food for human consumption which was actually adulterated was an offence even if it was advertised to be of a mixed character.

The knowledge and awareness of pur haser are wholly immaterial as the object and policy of the statute is to protect the public by prohibiting the sale in any circumstances of adulterated milk or milk which did not come up to the prescribed standard of purity.4

American cases. Adulterating as a necessary element of the offence may be accomplished in different ways according to the statutory definition; it may be by addition or subtraction of ingredients, by the presence of harmful or contaminated matter, or by a failure to attain a statutory standard.

There must be a sufficient showing of an adulterating of a product to constitute the offence herein discussed, but as will be seen in this section, there is by no means a uniform rule or definition as to what constitutes an "adulterating" or "adulteration." Where the statutes fail to define these terms or to indicate that they are to have any other than their common significance, recourse must be had to their ordinary definition and meaning,6 but where the statute does not contain a specific definition, the Court is bound thereby and cannot extend it.7

<sup>1.</sup> See Parliamentary Debates, Rajya Sabha.

Public Prosecutor v. Modi Kandayya, 1)47
 Mad. 184: 1947 Mad. 185.
 A. I. R. 1930 Cal. 273: 1930 Cr. C.
 353: 127 I. C. 57: 31 Cr. L. J. 1151:

<sup>57</sup> Cal. 1123,

<sup>4.</sup> The Public Prosecutor v. Modi Kandayya, 1947 Mad. 184.

<sup>5.</sup> Bartley Oct Co. v. Lynch, 124 N. W. I, 994: 109 Minn. 487: 25 L. R. A. (N. S.) 1234: 2 C. J. p. 4, note 40. 6. Cammon wealth v. Hongh, 1 Pa. Dist. 51, 53: 2 C. J. p. 2, note 2. 7. State v. Weedon, 100 P. 114: 17 Wyo.

<sup>418.</sup> 

Addition, subtraction, or substitution of ingredients. While, as shown above, the ordinary meaning of the term "adulteration" generally imports the addition of a foreign substance to the product adulterated, yet in the sense in which the word is used in some of the statutes no foreign substance need be added to the article to constitute an adulteration, for example, the abstraction of an important constituent may accomplish an adulteration,2 too, a product may be adulterated by a failure to eliminate impurities present in the product before manufacture or refinement.3 Under some statutes the substitution, in whole or in part, of a cheaper or inferior substance for an essential ingredient is an adulterating.4 However, an article is not necessarily adulterated because an ingredient, not essential or usual to its composition has been added to it.5

Colouring matter. The addition of red aniline to kerosene, where it is shown that such colouring matter does not affect the illuminating qualities or render the oil less safe, does not constitute an adulteration.6

Standard of quality. Where the statute prescribes a fixed standard of excellence for certain products, an article of that class which fails to test up to the statutory standard will be considered to the adulterated.7

Reasonableness of Standard. The question of the reasonableness of the statutory standard is not open to inquiry on the trial, for, if the Legislature can fix a standard, it may judge whether or not products below that standard are deleterious. The Courts cannot review that judgment8 and its matters not that the article contains no foreign ingredient,9 or is not harmful 10 or is actually wholesome. 11 Water is frequently held to be an adulterant under such a statute when its addition results in the lowering of the quality of the product or quantity of the ingredients below the set standard 12; but where the presence of water or excessive moisture does not violate any statutory standard and does not cause injury to the product or decrease its desirability for the purpose for which it is sold, its presence in an article does not constitute an adulteration. 13

Moisture above average. Barley and oats are not subject to condemnation as adulterated with water, merely because containing an excess of four per cent above the average of moisture, where this percentage is not as high as the forbidden statutory standard and the moisture does not injure the product or make it less valuable 14. The question of the adulteration of milk with water is discussed in the title Food, Sec. 15.

Injurious quality. A statute which is directed to the prevention of the admixture of poisonous or harmful ingredients requires a showing that the ingredient used was in fact toxic or deleterious.15

- St. John v. New Yark, (N. Y.) 26 S. Ct. 554: 201 U. S. 633: 50 L. Ed. 896: 5 Ann. Cas. 909: 2 C. J. p. 2, note 4.
   St. John v. New York, supra: 2 C. J.
- p. 2, note 4.
- Stowell v. Standard Oil Co., 102 N. W. 227: 139 Mich. 18.
- 4. Pen v. Jenningv, 94 N. W. 216: 132 Mich.
  - B nles Oil Co. v. Lynch, 124 N. W. 994. 109 Minn. 487: 25 L. R. A. (N. S.) 1:34.
- Ibid.
- American Linsced Oil Co. v. Wheaton, 125 N. W. 127: 25 S. D. 60: 41 L. R. A. (N. S.) 149: 2 C. J. p. 2, note 8, p. 4
- St. L. iv. Leissing, 89 S. W. 611: 190 Mo. 464: 1 L. R. A. N. S. 918: 4

- Ann. Cas. 112 : 2 C. J. p. 2, note 8 (b).
- Com. v. Warren, 86 N. E 308 : 160 Mass. 533; Peo v. Bosch, 114 N. Y. S.
  - 65: 129 App. Div. 660.

    American Linseed Oil Co. v. Wheatm. 125
    N. W. 127: 25 S. D. 60.
- 11. State v. Campbell, 13 A. 585 : 64 N. H. 402 : 10 Am. S. R. 419 ; Peo. v. Ko ter, 106 N. Y. S. 793 : 121 App. Div. 852
- Barron County Canning and Pickle Co. v. Niana Pure Food Co., 211 N. W. 764, 766: 191 Wis. 635: 2 G. J., p. 5, note 43. U. S. v. 800 Sarks Barley Mise! Ova, C. C. A. (Miss.) 64 F. (2d. 678.)
- 14.
- People v. Lefhoff, 263 N. Y. S. 297, 299 : 147 Misc. 70 : 2 C. J., p. 4 note 39.

Continued use. The addition of an ingredient which is poisonous or injurious when continuously or indiscriminately used has been held to constitute an offence.1

Contamination or decomposition is considered to be an adulteration of certain kinds of products within some statutes.2

3. Prejudice of purchser. The words "to the prejudice of the purchaser" appear to have been inserted in the section in order to ensure that the supplying of an article, superior in quality to that demanded would not ordinarily be regarded as an offence under the Act.

These words mean, to the prejudice of an ordinary person who purchases or may purchase such an article. If an ordinary person is likely to be prejudiced by the purchase of such an article, the offence under the Act would be committed, even though the actual purchaser in the particular case may not have been prejudiced.3

The words "to the prejudice of the purchaser" are also used in the English Act, the Food and Drugs (Adul eration) Act, 1928. In Halsbury's Laws of England (Second Edition, in Para. 244 in Vol. XV) it is stated:

"... The prejudice, however, is not confined to pecuniary prej dice, nor to prejudice arising from the consumption of unwholesome food, nor to prejudice or damage to the actual purchaser in the particular case. But there is prejudice whenever there is a sale of an article in such a state that an ordinary unskilled person would have been prejudiced if he had received it in response to his demand for an article of that denomination, although for some reason, peculiar to himself, the actual purchaser is not prejudiced. It is no defence to a prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by the sale."

Similar words were used in Sec. 6 of the earlier English Act, the Sale of Food and Drugs Act, 1875. The question how these words should be construed was considered in Pearls, Gunston & Tee Itd. v. Ward. It was held in that case that a sale may be to the prejudice of the purchaser within Sec. 6 although the purchaser had special knowledge, not derived from information given by the seller, that the article sold was not of the nature, substance, and quality demanded by him and that the test is whether the sale would have been to the prejudice of a purchaser who had not that special knowledge. Darling J, in his judgment observed:

> "With regard to the other point, it is said that there was no sale to the prejudice of the purchaser, because the woman knew that there was moisture in the butter, and also because she did not really want the butter which she bought. It is frequently argued in these cases that it must be proved by the prosecution that the sale was to the prejudice of the particular purchaser. I do not think that is the meaning of the section. I think the words 'to the prejudice of the purchaser' are used in the sense that there is a sale to the prejudice of the purcheser if a purchaser in the abstract would be prejudiced, although the actual purchaser may for some reason peculiar to himself not be prejudiced.

<sup>1.</sup> State v. Hitchinson, 45 N. E. 1043 :

<sup>55</sup> Ohio St. 573. U. S. v. 462 Boxes of Oranges (D. C. Colo. 249 F. 505, 507: U. S. v. 13 Crates of Frozen eggs, (N. Y.) 215 F. 584: 131 C. C. A. 652, error dismissed, 215 F.

<sup>585: 131</sup> C. C. A. 653; State v. Grey's Harbor Commercial Co., 214, p. 13, 15: 124 Wash, 227: 2 C. J. p. 2, note. 7. State v. Amratlal Biograph, 1954 Bom. 216:

<sup>55</sup> Bom. L. R. 975.

<sup>1902, 2</sup> K. B. 1. 4.

Goods might be sold under a false description and might not inflict any actual injury, because they were in fact of a better quality than the goods demanded; but it was never intended that in such a case there should be a prosecution; and I think that is the reason why the words 'to the prejudice of the purch ser' are inserted in the section. Provision is made in Sec. 13 for the purchase by the inspectors of nuisances, officers of health, and other similar persons, of samples of food or drugs for the purpose of analysis, and if it were necessary to prove that the sale was to the prejudice of the particular purchaser, it never could be proved in such a case as that, because the purchaser is probably provided with money out of the public funds to pay for the article, and, however bad it may be, he is none the worse off, because the article is not intended to be used by him, but is to be analysed. A person in that position cannot in the nature of things be prejudiced by the sale.

Therefore it is not correct to say that where an inspector purchases an article or sample of food for the purposes of analysis and not for his own use, the transaction is a sale to the prejudice of the purchaser because the inspector is not personally effected whether the article is pure or adulterated.1 It was held that when an adulterated article of food is sold to a Food Inspector, the person selling it commits an offence under the Act. The expression "to the prejudice of the purchaser" in State v. Bharat Shankar Topkir2 has been construed by the Bombay High Court to mean "prejudice to the generality of purchaser" and not "prejudice to the actual purchaser" in particular case. A particular person in a given case may not be prejudiced by the purchase but if an ordinary person who purchased an article of food was likely to be prejudiced by purchase there could be committed an offence under the Act. Where a Food Inspector having already suspected that a particular milk was not mixed mi'k of cow and buffalos as alleged by the accused but was adulterated buffilo's milk purchased the same for the purpose of analysis it cannot be said that there was no prejudice caused to the Food Inspector. Bavdekar, J., took the view that the words "to the prejudice of the purchaser" denote "to the prejudice of the purchaser who actually purchases the article which is not of the nature, substance or quality demanded by the purchaser." The it sertion of the words "which is not of the nature, substance or quality demanded by or on behalf of the purchaser" shows that the purchaser must get the article which he demands and it is not a matter for the vendor to inquire into the question as to why the purchaser wanted the article and defend a charge made against him for selling an adulterated article by pointing out that no ac ual loss was caused to the purchaser. There can be no prejudice to the purchaser where article has not been actually sold, that is mere exposure for sale without there being a purchaser shall not constitute element of prejudice as contemplated by the section.3

Where an article of food which was not of the nature, substance and quality demanded, was sold to an Inspector of Nuisances who purchased for

<sup>1.</sup> State v. Amritlal Bhogilil, 1954 Bom. 215: 55 Brm. L. R. 975; In State v. Suon liki i Perstatum Cri. A. No. 715 of 1949, dated Peth July, 1950 Bom.) See also Lebender v. Hould Lallubhai decided on "Ith January 1946 (Bom.); State v. Part South Jackhai Cri. A. No. 471 of 1950, dated 21st September, 1950. 1950 (Bom ); Side v Nutri Jhina, Cri. A. Nos. 850 and 861 of 1950 dated Prosecutor v. K. V. R. Annamalai Chettiar. 1953 Mad. 862: 1953 Cr. L. J.

<sup>1639:</sup> Public Prosecutor v. Dada Haji Ebrahim, 1953 Mad. 242: 1953 Cr L. J. Ebrahim, 1953 Mad. 242: 1953 Cr L. J. 479: Public Prosecutor v. Narayana Singh, 1944 Mad. 236: 45 Cr. L. J. 724: Public Prosecutor v. Ramchandrayya: 1948 Mad. 329: 49 Cr. L. J. 395; Contra, Public Prosecutor v. Sriniwasa Rav, 1938 Mad. 541: 39 Cr. L. J. 375, In re Kankayya, 1942 Mad. 609: 45 Cr. L. J. 863.
2. 1954 Bom. 366: 1954 Cr. L. J. 994.
3. Suraj Narain v. Municipal Board, Licknow, 1939 Oudh 105: 1939 A. W. R. 49: 107 I. C. 993: 40 Cr. L. J. 301.

the purpose of analysis under English Act, 1875, Sec. 13, with money belonging to the authority by whom he was employed. Held, such sale was "to the prejudice of the purchaser." By the word "purchase" Sec. 6 of the English Act intended to include an official purchaser authorised to purchase for analysis.1

The case-law has definitely established that—

- (1) a purchaser cannot be prejudiced if at the time a sale takes place he is informed, by notice or, otherwise, that the article is not of the nature, substance or quality demanded,2 e. g., if a purchaser asks for coffee and he is supplied with a mixture of coffee and chicory in a packet which is properly labelled, no offence is committed,3
- (2) it is not necessary to show that a purchaser sust fined actual prejudice or damage by the sale of an article, it is sufficient that he was sold something which was not of the nature, substance or quality he demanded.4

If this were not so, sampling officers would be in a difficulty, as it could always be argued that when making purchases, as they do, for purposes of analysis only, they could not be prejudiced.

W was charged before Justice with selling for new milk an article not of the nature, substance and quality demanded, contrary to English Act, 1875, Sec. 6. A sergeant of police acting under H's order who was an Inspector under the Act, purchased the milk from W who, when he was asked for new milk skimmed and charge a penny a pint, the usual price for the skimmed The Justice: differed, one being of the opinion that only a penny a pint being asked the purch ser must have been aware it was skimmed milk he was buying. Held, the knowledge of the purchaser was immaterial and the case was remitted to the Bench to convict.5

If the matter or ingredient added to the article of food is not injurious to the health of the purchase; and if it is shown that the addition was required for the production or preparation of the article the sale would not be deemed "to the prejudice of the purchaser"; but if on the other hand, it is shown that the addition was made frau lulently to increase the bulk, weight or measure of the feod or to conseal the inferior quality thereof the sale shall be deemed "to the prejudice of the purchaser."6

If the article exposed for sale by a person is not purely one for which he is given a licence, he can be held liable under the Act without there being a purchase: who need not be prejudiced.7 In such circumstances it is not

necessary to prove prejudice.

Position under U. P. Prevention of Adulteration Act, 1912. [Repealed by U. P. Pure Food Act.] Under clause (c) to the proviso to Sec. 4 of the U. P. Prevention of Adulteration Act, 1912 (Repealed by U. P. Pure Food Act, 1956) it was necessary that there should be a label distinctly and legibly written or printed on or with the article showing that any such matter or ingredient as was referred to in the clause had been added to or mixed with the article of food.

Hoyle v. Hitchman, (1879) 4 Q. B. 233: 40 L. J. M. C. 97: 40 L. T. 252: 43 J. P. 430: 27 W. R. 487 D. C.

2. Sandys v. Small, (1878) 3 Q. B. D. 449: 25 Digest 83, 113; and other cases reported at page 87 et seq. Bell's Sale of Foed and Drugs, 11th Edn., London,

Butterworth & Co., Ltd. See Higgins v. Hall, (1886) 51 J. P. 293:

26 Digest 86, 133,

4. Hoyle v. Hitchman, (1879) 4 Q. B. D.

233: 25 Digest 83; 110; and other cases reported in "Bell", op. cit. p. 93.

Heywood v. Whitehood, (1897) 76 L. T. 781: 13 T. L. R. 503: 18 Cox. C. C. 615 D. C.

6. Ran Badal v. The State, (1951) 6 D. I..

R. All. (Luck. B.) 335.
7. Suraj Narain v. Municipal Board. Lucknow, 1939 Oudh 105: 1939 A. W. R. 49; 179 I, C, 993: 40 Cr. L. J. 301.

Under the proviso of Sec. 6 of that Act, it was further necessary for exemption from the provisions of Sec. 4 to prove not only that the article or drug sold was purchased by the accused as the same in the nature, substance and quality as that demanded by the purchaser and with a written warranty to the effect that it was of such nature, substance and quality, but also that he had no reason to believe at the time when he sold it that the article or drug was not of such nature, substance and quality as aforesaid, and also that he sold it in the same state in which he purchased it.1

It is for the desence to establish that the case would come under proviso (c) of Sec. 4 (1) of the U.P. Prevention of Adulteration Act, 1912 (repealed by U. P. Pure Food Act, 1950) by proving that before the sale the seller brought to the notice of the purchaser either by means of a label distinctly and legibly written or printed on or with the article or otherwise the fact that such matter or ingredient had been so added or mixed.2

5. Notice to purchaser. Where the seller of an article brings to the purchaser's knowledge the fact that the article sold to him is not of the nature, substance, or quality of the article he demands, the sale is not to the prejudice of the purchaser and consequently no offence is com-

In Kirk v. Coales, wherein an Inspector purchased a pint of milk which the salesman had told him that it was old milk. In that case i was held that no offen e had been committed under the Food and Drugs Act of 1875.

6. Notice must be clear and unequivocal. An agent of and acting at the instance of an Inspector under English Act, 1375, entered the shop of a provision dealer and pointing to an article labelled "Valleyfield Finest Oleine Cheese" demanded two pounds of cheese. The words "Finest Oleine" were in smaller type than the other words. He did not notice the word "O'eine" and did not know its meaning. He received the article and paid for it. The Inspector then entered the shop and notified that he intended to have the substance analysed. The purchaser did not receive any label that the article was a mixture. The analysis showed the article to contain 70 per cent of fat other than milk fat. The Magistrate held that there was no sufficient indication of the admixture of foreign ingredient and that the purchaser was supplied to his prejudice with an article not of the nature, and substance demanded. Held, the vendor was rightly convicted of selling the article to the prejudice of the purchaser.5

In selling spirits diluted with water only the seller is not liable to a penalty if he brings to the knowledge of the purchaser at the time of the sale the fact that the spirits are diluted so as to be reduced more than the number of degrees under proof specified in English Act, 1879, Sec. 9, because if that fact be brought to the knowledge of the purchaser, the sale cannot be said to be to the prejudice of the purchaser. It is not necessary that the seller should give notice of the admixture of water with spirits by label.6

7. Cases of fraud. R went into L's shop and asked for half a pound of coffee, for which he was charged 9d. being the price of pure coffee. When

Emperor v. Brijlal, 1937 Oudh 130: 160
 C. 489: 37 Cr. L. J. 403: 12 Luck. 24: 1936 O. W. N. 215.

Rames' war Das V. Entperor, 1936 All. 86: 1936 A. W. R. 180: 1936 A. L. J. 311: 160 L. C. 1026: 37 Gr. L. J. 350: Emperor v. Nur Ahmad, 1934 All. 142: 151 I. C. 114: 3 A. W. R. 783: 1934 A. L. J. 839: 35 Cr. L, J. 1229.

3. Sandys v. Small, (1878) 3 Q. B. D. 449: 47 L. J. M. C. 115: 39 L. T. 118: 42 J. P. 550: 26 W. R. 814
4. 1883) 16 Q. B. D. 49: 55 L. J. M. C. 182: 50 J. P. 148: 34 W. R. 295: 54

L. T. 178.

Collett v. Walker, (1895) 64 L. J. M. C. 267: 59 J. P. 600: 11 T. L. R. 572:

6, Palmer v. Tyler, (1897) 61 J. P. 389,

the coffee was put in a parcel and lying on the counter, and after payment R said he bought it for analysis, whereupon L pointed out on a label outside the parcel the words "this is a mixture of coffee and chicory." On analysis the coffee was only 60 per cent. and the Justices found that the chicory was used fraudulently to increase the bulk and convicted L. Held, the Justices on such a finding of fact as to fraud were right.<sup>1</sup>

H went into M's shop and asked fo a quarter pound of coffee. While it was weighed out M pointed out that the coffee sold was mixed with chicory and the label on the outside so stated. The price was 1 s. 4 d. per 1b. and on analysis it contained only 15 per cent. of pure coffee. M sold it exactly as it came from the manufacturer. Held, the Magistrate was bound, notwithstanding the label to find whether the chicory was used fraudulently to increase the bulk and if so he ought to convict.<sup>2</sup>

Appellants were summoned for selling to the prejudice of the purchaser coffee adulterated with 74 per cent chicory. It was prove, that an Inspector on asking for half a pound of coffee was supplied at the price of 11 d., with half a pound of mixture of which 74 per cent, was chicory and 26 per cent, was coffee, and with two coupons entitling him to contain other articles. The article sold was labelled "coffee mixture" with the words "sold as a mixture of chicory and coffee" in small print. The Inspector's attention was not drawn to the label prior to sale. The Magistrate held that the offence charged had been committed and that as chicory had been added fraudulently to increase the weight and bulk of the article sold, the label afforded no protection to appellants. Held, that there was evidence to justify this finding.

(2) The following notice was annexed to articles in he shop which were intended to be given in exchange of coupons: "Given away with 1.1 lb. of tea also with 1.4 lb. mixed coffee, 1,4 lb. cocoa mixture or three tablets of soap."

The expression "mixed coffee" does not necessarily lead the purchaser to assume that the coffee is mixed with something that is not coffee. The word 'mixed' did not necessarily convey any information to the person who had it before him.<sup>3</sup>

8. Nature, substance and quality of article demanded. The question whether the particular article sold was not of the nature, substance or quality demanded so as to contravene the provisions of the Act, is a question of fact to be determined on the evidence.

In a c se the prosecution examined an analyser who said that "vinegar" was the preduct of fermentation or brewing and that the substance sold by the applicant was "artificial" or synthetic vinegar produced not by fermentation or brewing but merely by diluting acetic acid with water. The defence produced no evidence whatever. Held, that the Magistrate was justified in finding for the prosecution.<sup>4</sup>

Whether ghee is to be deemed to be adulterated or not is not a matter on which the Chemical Examiner should be required to express an epinion. It is a question of law. What he has to do is to state the results of his analysis and leave the court to determine whether on those results the offence chareed is proved or not.<sup>5</sup>

<sup>1.</sup> Liddiard v. Reece, (1878) 44 J. P. 4. Parassam Tel. h-n! v. Folian. 1910 Sind. 127: (1940) Kar. 282: 41 Cr. L. J. 839:

<sup>2.</sup> Horder v. Meddings, (1880) 44 J. P. 190 I. C. 328. Nav. j n la. v. Experimental Star Tea Co. Ltd., v. Neale, (1909) 73 J. P. 54: 8L. G. R. 5 D. C.

Appellant a publican was convicted under English Act, 1875, Sec. 6 for "selling to the prejudice of purchaser a pint of gin which was not of the nature, sul stance and quality of the article demanded by the purchaser." A per on . sked for a pint of gin at the appellant's premises. Appellant said that he had gin at 2s. and 1s. 4 d. per pint. The purchaser bought a pint at the latter price. On analysis the gin was found to contain 43.15 per cent. of water, that is it was 43. 15 below proof, but the mixture was not injurious to health. The Magistrate found that there was no recognized standard of alcoholic streagth for gin but that it varied from proof to 20 under-proof. Held, whether the mixture in question was what a purchaser buying gin without any further description would reasonably expect to receive was a question of fact for the Magistrate and that there was sufficient evidence to justify the conviction.1

Upon the hearing of a complaint under English Act, 1875, Sec. 6, Justices applying their own special knowledge of the article alleged to be adulterated and without hearing evidence in contradiction of the Public Analyst's certificate considered that the case came within the proviso to that section. Being doubtful, however, as to whether a technical offence had not been committed, but considering that, if it had, it was in the absence of flaud, of too trifling a nature to merit a penalt, they discharged the accused under Lighth Summary Jurisdiction Act, 1879 (C. 49) Sec. 16. Held: (1) the Justices need start no case, for though technically wrong in not hearing evidence in contradiction to Analyst's certificate, yet they were not bound to discard their own particular knowledge of an acquaintance with the subject-matter of the complaint founded on practical experience; (2) fraud was no element of an offence under English Act, 1875, Sec. 6, and had the Justices entertained the question of fraud they would have been wrong, but in determining whether they should act under Sec 16 of the Summary Jurisdiction Act (1879) (Cl. 49) Sec. 16 they could take the fact of absence of fraud into their consideration.2

On 10th November, 1911, P demanded of and purchased from R's son as agent for R, half a pint of milk, which R's son took from a tin or churn. P duly took a sample for analysis. Upon a summons for selling milk to the prejudice of P the purchaser, the certificate of Public Analyst was put in by P which certified that in his opinion the sample analysed, which contained 7.48 per cent. of non-fatty solids, contained 12 per cent. of added water calculated on the limit of the Bond of Agriculture, which is 8.5 | er cent. of nonfatty solids. No change had taken place in the constitution of the article that could interfere with the analysis. No evidence was called by R ner did he give evidence himself or require that Public Analyst should be called as a witness. The tin or churn from which the milk was taken was not stirred prior to the milk purchased by P being taken therefrom. The Justices were of opinion from their own knowledge that the sample as taken by P did not fairly r present the whole contents of the vessel containing the milk and that the slight deficiency in the standard prescribed by Sale of Milk Regulations, 1901, relating to milk might be due to causes other than abstraction of solids or the addition of water, and they felt that they were not justified in convicting on so small a percentage of water being shown in excess of regulations, having regard to the fact that the articles supplied to appellant was of good quality. They were further of the opinion that the offence was in any event of so trivial a nature that they were justified in dismissing the information. H ld, on appeal Justices were entitled to take their own knowledge into account in deciding whether the offence was trivial and to dismiss the charge.3

Webb v. Knight, (1877) 2 Q. B. D. 530:
 46 J. J. M. C. 264: 36 L. T. 791: 41
 J. P. 726: 26 W. R. 14 D. C.

R. v. Field, etc., JJ., Ex parte White, (1895)
 L. J. M. G. 158: 11 T. L. R. 240

Provine v. Relfin, (1912) 10. L. 110: 76 J. P. 359: 28 T. L. R. 435: L. G. R. 717: 23 Cox. C. C. 160.

Where a person is charged under Sec. 3, sub-section 1 of the English Food and Drugs Act, 1938, with selling to the prejudice of the purchaser, any food which is not of the nature, sub-tance or quality of the food demanded, it is not sufficient, to justify a conviction, that an expert witness, such as a public analyst, should express the opinion that the article in question should contain a certain irgredient. Evidence must be forthcoming that when a member of the general public asks for the food he means, and means only, an article containing an ingredient which is absent in the food in respect of which the charge is brought.1

9. Absence of statutory standard. I a statutory standard of quality has been prescribed for certain product, an article of that class must not be inferior to that standard.

If an article is sold as mustard oil and is not in accordance with the prescribed standard for mustard oil, the offence under the Act is committed notwithstanding that there may be a placard or other advertisement enabling the public or the literate portion of the public to ascertain before making their purchases that the oil is some other article than pure mustard oil.2 It cannot be said that when no standard of purity of an article has been fixed by the Government under Sec. 23 of the Act, an offence which is punishable under Sec. 16 of the Act cannot be committed in respect of that article. Section 23 of the Act confers a power upon the Government to fix standards whenever they think it proper to do so, but apart from the standard fixed by Government under Sec. 23, a person may be guilty of an offence punishable under Sec. 16, if he sells any article of food which is not of the nature, substance or quality which it purports to be. The question for consideration of the Court in such a case is whether the accurd had sold an article not of the nature, substance or quality of which it purported to be, and is not whether it was one of the articles in respect of which the Government had made rules under Sec. 23 of the Act.3 If the article has no recognised standard of quality the Court must fix a standard.4

In re K.S. Ambi Iyer5, it was however held that it is not right to convict a man for a breach of the adulteration law when there is no law or rule having the force of law prescribing a particular composition for the article that is exposed for sale.

In the above-noted case the Government had not laid down any standard of composition for sweetment (kajvor) for elling which accused was being prosecuted. Held, that selling the article of food known a kajoor which did not contain what it was usually expected to contain could not amount to an offence.

On an information under Sec. 6 of the English Act, 1875, for unlawfully selling to the prejudice of a purchaser a certain article of food, margarine, not of the nature, substance and quality demanded by the said parcian er the Justices found as a fact that there was a sale to the prejudice of the purchaser, as they were of the opinion that the article sold was not of the nature, substance and quality demanded; the evidence before them proving to their satisfaction that margarine as usually sold contained at least 85 per

<sup>1.</sup> Collins Arden Products Ltd., v. Barkey Corporation. Div. Ct. (1943) K. B. 419: 112 L. J. (K. B.) 406: 169 L. T. 12: 107 J.P. 117: 41 L.G.R. 161: 59 L.T.R. 257: (1943) 2 All. E. R. 249.

Rameshra Chaudhay v. Purulia Municipality, 1933 Pat. 193: 14 P. L. T. 146: 143 I. C. 65: 34 Cr. L. J. 572; see also Karnidar Sarda v. Emperor, 1935 Pat. 521: 16 P. L. T. 655: 158 I. C. 728.

<sup>3.</sup> Do Mitra v. Rex and another, 1949 All. 35: 1948 A. L. J. 480; Public Prosecutor v. Simidhi Srivangaya Kulu, 1914 Mad. 629: 50 Cr. 1. J. 893 1949 M. W. N. 282: (1949) 2 M. L. J. 15.

Broker v. Woodboffe: Broker v. Premier Co., (1928) 1 K. B. 21. 1939 Mad. 375: 181 I. C. 51: 40 Cr. L,

J. 513.

cent. of fat and they convicted defendant. It appeared that the magazine sold contained only 75:15 per cent of fat. Held (1) as there is no statutory standard for margacine, the Justices on such information must fix for themselves a stundard for margarine based upon the evidence before them; (2) there was evidence before the Justices on which they could come to the conclusion that margarine as usually sold contained at least 85 per cent. of fat.1

Where on a prosecution under Sec. 3, sub-section (1), of the English Food and Drugs Act, 1938, for selling a food which is not of the nature, substance and quality demanded by the purchaser, there is no fixed standard of quality for the article of food, and the public analyst who has given a certificate of analysis of the sample of the food purchased gives evidence, the Court, in forming their own standard of quality, in the absence of evidence qualifying or contradicting the evidence of the analyst, must accept the statements of fact and opinion expressed in that evidence.2

A company was charged with selling in July, 1941, chocolate dessert powder, which was not of the nature, substance and quality demanded by the purchaser, contrary to Sec.3 of the English Food and Drugs Act, 1938. The Justices held that, in fixing a standard for the substance and quality of the article sold, they were entitled to have regard to the standard for food powders fixed by an order made under the English Defence (General) Reglations, 1939, although that order did not come into force until November, 1941. As the article sold fell short of that standard, they convicted the company. There was no evidence that any ordinary member of the public had been prejudiced by the sale.

Held, that the standard under the order, which might have been made for economic reasons and not with reference to the objects of the English Food and Drugs Act, 1938, was not applicable to the sale by the

company, and the conviction must be quashed.3

10. Vature of article damanded: Article wholly different: Linseed oil for sarson oil. In Mangal Mal v. The State.<sup>4</sup> it was held that to offer linseed oil as sarson oil is not adulteration of food. A conviction under the Punjab Pure Food Act cannot be supported. However, the present Central Act has made it an offence to sell an article of food by a name which belongs to another article of food.5

'Savin' for 'saffron'. Respondent, a herbalist, was charged before a stipendiary Magistrate under English Act, 1875, Sec. 6, with selling to the prejudice of the purchaser, a certain drug which was not of the nature, substance and quality demanded. It was proved that the purchaser had asked for "saffron" and was supplied with "savin" in its natural condition and not admixed or compounded with any other drug, article or ingredient. The stipendiary Magistrate dismissed the information on the ground that it was no offence under 1875 Act to sell an article pure in itself but not the one demanded. Held, he was wrong in so doing and the case must be remitted for further hearing.6

'Tapice! for 'sago.' Respondent being asked to sell sago delivered to the appellant as purchaser pearl tapioca of a quality and description which, by the custom of the trade was sold as sago. There was no appreciable difference in the value of two articles, but the pearl tapioca being white: looking, the public, as a rule, had for a considerable number of years demanded it in preference to

Roberts v. Leemig (1905, 65 J. P. 417: 3 L. G. R. 1031.
 Div. Ct. (1944) K. B 269: 113 L. J. (K. B) 248: 170 L. T. 298: 100 J. P. 75: 42 L. G. R. 88: 60 T. L. R. 247: 1911 2 MI. E. R. 544.

Div. Ct. 170 L. T. 297: (1944) W. N.

<sup>14: 108</sup> J. P. 101: 42 L. G. R. 91: 60 T. L. R. 196.

<sup>1.</sup> L. R. 190.
4. 1952 Punj. 140: 1952 Cr. L. J. 492.
5. See Sec. 2 (ix) (c).
6. Knight v. Bowers, (1885) 14 Q. B. D. 845: 54 L. J. M. C. 108: 53 L. T. 234: 49 J. P. 614: 33 W. R. 613: 1 T. L. R. 390: 15 Cox G. C. 728, D. C.

the darker coloured sago by the name of sago. Respondent was summened under English Act, 1875, Sec 6. Held, the Justices might find that such sale was not to the prejudice of the purchaser and might on that ground dismiss the information.<sup>1</sup>

Sardines in cotton-seed oil for sardi es in olive oil. On February 12, 1914, respondent purchased from appellant some tins of "sardines in olive oil". Appellant delivered tins of sardines which in fact contained cotton-seed oil instead of olive oil. Respondent opened the tins, and having put the contents into three jars which he covered with grease-proof paper and securely sealed, delivered one of the jars to the appellant. On the same day respondent cause I the conteats of one of the jars to be analysed by the public analyst. There was no negligence in the sealing of the jars on the part of the respondent and about a fortnight after the purchase of the sardines information was conveyed to appellant as to the result of analysis and as to the probability of legal proceedings being instituted against him. Respondent subsquently 1 id an information against appellant under English Act, 1875, Sec. 6, for selling to the prejudice of the purchaser a certain acticle of food, namely the sardines in olive oil which was not of the nature and quality of the article demanded and on March 11 a summons in respect of the charge was served on appellant. Appellant did not send for analysis the jar delivered to him by respondent until March 17, 1914, when owing to the condition of its contents they could not be analysed and it was a mitted that they were not capable of being analysed on March 11, the date of service of summors. Held, it was not necessary under the English Act, 1875, Sec. 14, that the jars should be so sealed or fastened up that it would be capable of analysis at the time the summons was served on appe'lant and as he had a reasonable opportunity, if he so desired, of having the sample effectively analysed in order to check the analysis made by public analyst the prosecution would lie.2

11. Quality of article demanded: Commercial quality. An information was preferred by respondent against appellant and another for unlawfully selling to the prejudice of the purchaser mixed lutter and margarine which was not of the nature, substance and quality of the article demanded by the purchaser, there being a proportion of 80 per cent of foreign fiel, 151 per cent of water, curd and salt, and 41 per cent of butter contrary to English Act, 1875. An agent of respondent, acting upon his instructions, went to appellant's shop and asked an a sixtual for two ounces of butter at 1 at 2 d. per lb. The assistant informed respondent's agent that appellent did not sell butter at the shop at the price of 1 s. 2 d. per lb., but that he did sell a mixture of butter and margarine at 1 s. 2 d. which was very good. Respondent's agent stated to the assistant that she would have two ounces of the mixture and the same was put up in a wrapper and supplied to her accordingly by the assistant upon payment of 13 d. At the date of the sale of retail the price of margarine was 6 d., 8 d. and 10 d. per lb. The Magistrate was of the opinion that an offence had been committed on the ground that in view of the proportions of the several ingredients the mixture could be regarded only as a colourable one, and that in it as "very good" and selling it at the price named it was intended to deceive the purchaser by leading him to believe that it contained a substantial proportion of butter, whereas the analysis disclosing only a small percentage of butter fut showed that it contained no such substantial proportion. He accordingly convicted the appellant. Ibld: (1) the word "quality" in Sec. 6 of English Act, 1875, meant commercial quality of the article sold and not merely its description; (2) regard must be liad to Sec. 8 of the English Act, 1899, which the Magistrate had not before him.

Sandys v. Rhodes, (1903) 67 J. P. 352.
 Winterbottom v. Allwood, (1918) 2 K. B. 608: 84 L. J.K.B. 1225: 112 L.T, 590;

and which makes it unlawful to sell any margarine "the fat which contains more then 10 per cent of butter fat." Therefore when considering the amount of butter the puchaser of a mixture of margarine and butter had a right to expect, the law which makes it an offence to sell margarine mixed with more then 10 per cent of butter mu t be taken into account, and it was impossible to hold that there was evidence in the present case of a colourable sale, The conviction must therefore be quashed.1

12. Article "demanded": What is demand. An Inspector having asked respondent for a sample from certain milk churns was supplied with such sample; but the Inspector made no request in terms to be supplied with milk. A sample having been given it was found on analysis o be deficient in mi'k fat. Held, there was no sale to the prejudice of the purchaser.

The facts set out in the case show that the purchaser obtained what he demanded, i. e., a sample from the churn, and that his request for this sample did not amount to a request to be supplied with milk so as to support information under the Act. There was a demand in one sense, but not a demand under the Act.2

13. Effect of provision in contract as to quality. A contracted to supply a workhouse with milk to contain a certain percentage of cream; to be tested on delivery and a reduction to be made in price in respect of any deficiency in cream; and samples to be taken from each of the cans in which the daily supply was delivered. Samples were taken from five cans under English Act, 1879, Sec. 3, and a large deficiency of cream found in two samples. Held: (1) the procuring of each sample was a separate atcion and I was rightly convicted in a separate penalty in respect of each sample which was descient in cream; (2) the fact that A's contract with the workhouse provided for a reduction in price if the percentage of cream was below a certain amount did not affect the question whether an offence had been been committed; (3) evidence as to samples from the other cans was rightly rejected3.

A farmer, being under contract to supply milk containing a specified percentage of fat, delivered milk which contained a less percentage. The milk was in the same condition as that in which it came from the cow. On a prosecution for selling to the prejudice of the purchaser milk not being of the nature, substance and quality demanded. Held, as the milk was not adulterated either by the addition of something to, or the abstraction of something from the natural product of the cow, the mere fact that it was not of the quality contracted for did not make the sale an offence under the Act.4

- 14. Articles commonly assumed to contain foreign matter not injurious. If a particular article of food is commonly assumed to contain a foreign matter not i jurious to health and the article offered or exhibited for side by the accused is found to contain a foreign mixture and no more the implied warranty held out by him is not broken.5
- 15. Particular articles not of quality demanded. Demerara sugar. Appellant went to respondent's shop and a ked to be supplied with a p und of Demorars, upar, and respondents ald to him a pound of sugar as and for De narara sugar. The sugar was found to be cane sugar cry tal- and was not

<sup>1.</sup> Anness v. Grivell, (1945) 3 K. B. 685: 85 L. J. K. B. 121: 113 L. T. 995: 79 J. P. 550: 13 L. G. R. 1215: 25 Cox C. C. 190.

<sup>2.</sup> Sandys v Jackson, (1905) 92 L. T. 464: 69 J. P. 171: 3 L. G. R. 285 D. C. 3. Fecitt v. Walsh, (1891) 2 Q. B. 304: 60 L. J. M. C, C, 143: 65 L. T, 82: 55

J. P. 728: 39 W. R. 525: 87 Cox C. C. 322 D. C.

<sup>4.</sup> Few v. Robinson, (1921) 3. K.B. 504: 91 L. J. K. B. 42: 126 L. T. 94: 85 J. P. 257: 66 Sol. Jo. (W.R.) 15: 19 L. C. R. 708: 27 Cox C. C. 113 D. C.

Mithan Lal v. Emperor, 1934 All, 439; 149 I, C, 222; 35 Cr. L. J. 913,

Mauritius and coloured with organic dye. It was proved that the commercial value of the sugar was equal to the best grade of West Indian cane sugar, and also that what the public expect and receive under the designation of Demerara sugar is a crystallized cane sugar of yellow colour without reference to the country or place of origin. It was admitted by the appellant that the term "Demerara sugar" might properly be applied to similar sugar produced in West Indian Islands, but not to sugar produced elsewhere. Upon a summons under English Act, 1875, Sec. 6, the Magistrate dismissed the information on the ground that the term 'Demerara sugar' was a generic term applicable to any sugar of the substance, kind and colour of the sugar in question wherever produced and that therefore the sale was not to the prejudice of the purchaser. Held, on the facts as four d in the case the Magistrate was right in holding that the sugar in question was Demerara sugar although it had not been produced in Demerara.

Gin. Appellant sold as a bottle of gin, liquid composed of 26 per cent. alcohol, 70 per cent water and 4 per cent sugar. Evidence was adduced that gin was sold by retailers at varying strength from proof to 20 p r cent. underproof. This liquid was 44 per cent under-proof but the analyst said he should call it "gin whose alcoholic strength was extremely low." Justices convicted appellant under English Act, 1875, Sec. 6. Held, the facts justified the Justices' finding that this liquid was not of the quality of gin. but the excess of water has a fraudulent increase of the measure of article within the enacting part of English Act, 1875, Sec. 6.2

Lardine. Respondent was summoned for selling lardine not of the nature, substance and quality demanded. The certificate of the analyst stated that it was adulterated with 25 per cent of water. It was proved lard contains no water, the lardine was a substitute for lard, that there was no statutory standard for lardine, but that out of thirty-four samples of lard substitutes recently analysed by the analyst, twenty-eight contained no water. The Justices were of opinion that there being no statutory standard for lardine, and the only evidence before them of any commercial standard being the composition of the samples recently analysed by the analyst, they were not justified in holding that lardine must contain no water; nor in the absence of evidence as to the percentage of water in such samples, did they consider the evidence sufficient to enable them to fix a percentage of water permissible and to say that what respondent sold was not lardine. Held, the Justices had not properly considered the matter and the case must be remitted to them to determine whether in fact the lardine in question was adulterated or not.<sup>3</sup>

Green tea. Appellant, a tea dealer, was convicted under 35 and 36 Vict. c. 74, Sec.2, for selling as unadulterated 'green tea' which was adulterated. A person asked for two ounces of green tea at appellant's shop for which he paid 5½d. the shopman stating that he was authorised by his employers to guarantee all their green teas of the value of 3s. per pound and upwards as genuine green teas. On analysis the tea was proved to be painted or faced with gypsum or prussian blue for the pusposes of colouring it. The tea was sold in the same state in which it comes from abroad. The tea which is imported from China as green tea and generally known as such in the tea trade, is painted and faced in this manner; but this practice is not known to the public. Pure

<sup>1.</sup> Anderson v. Britcher (1913) 110 L. T. 335: 78 J. P. 65: 30 T. L. R. 78: 13 L. G. R. 10: 24 Cox C. C. 60 D. C.

<sup>2.</sup> Pashler v. Stevenitt, (1876) 35 L. T. 862:

<sup>41</sup> J. P. 136 D. C.

<sup>3.</sup> Rudd v. Skelton Comparative Society Ltd., (1911) 104 L. T. 919: 75 J. P. 326: 22 Cox C. C. 469 D. C.

green tea, though not known generally in the trade as 'green tea' is imported from Japan. Held: the conviction was right.1

Marmalade. To a person who asked for a pot of marmalade a grocer sold a pot of marmalade which was found to contain 13 per cent of starch glucose. The glucose consisted of sugar, a gummy su stance which had no sweetening properties, and water. There was no legal standard for the making of marmulade and manufacturers used various recipes, and for many years glucose had been used by many, though not by all manufacture is in the making of it. The glucose to the extent used was not injurious to health and it prevented the marmalade from crystallizing and had a tendency to prevent mildewing and fermenting. Held, there was no evidence that the article supplied was inferior to the article demanded or was adulterated, and no evidence therefore, that the sale was a sale to the prejudice of the purchaser.2

Preserved peas. Respondent was summoned for selling preserved peas the colour of which had been retained by addition of sulphate of copper but in such small quantity as not to be injurious to health and evidence was given that preserved peas are habitually sold with such addition. The Justices dismissed the summons. Held, the decision was justifiable on the facts of the case.3

Butter. Any butter in the manufacture or manipulation of which any process or material is used with intent or effect of causing the absorption of abnormal quantities of water, milk or cream, is adulterated. The mere fact that butter con ains 16 per cent or more of moisture does not render it adulterated.4 Appellants after butter had been made in the ordinary way mixed milk with it for the purpose of increasing its weight by a process which had the effect of retaining the water in the milk and caused an excessive quantity of water in the butter so treated. They sold the butter so treated to a purchaser as butter. Held, they had committed the offence specified in Sec. 6 of the English Act, 1875, namely, selling to the prejudice of the purch ser an article of food not of the nature and quality of the article demanded by them.5

Where butter which is offered for sale in sealed tins in the state in which it was purchased get; unavoidably admixed with extra moisture in the process of manufacture of butter it is not adulterated within the meaning of the Act.6

Margarine. Margarine having been purchased and analysed, evidence was given that it contained 21 per cent. of water which was at least 5 per cent. in excess of water that margarine should contain. Held, the vendor was rightly convicted of selling to the prejudice of the purchaser margarine not of the nature, substance and quality demanded.7

Mustard. A preparation was found to be a compound of mustard with about 35 per cent. of wheaten flour and a small quantity of turmeric and cavenne pepper. In proceedings before the Justices, they found that the article

Roberts v. Egerton, (1879) L. R. 9 Q. B. 491: 43 L. J. M. C. 135: 30 L. T. 633: 38 J. P. 405: 32 W. R. 797 D. C. Smith v. Wildon, etc., 1901-35 L. T. 760: 66 J. P. 150: 15 T. L. R. 92: 46 Sol. Jo. 30: 20 Gox G. (135) D. C. Fried v. Matth. (1904) 68 J. P. 589: 2 J. G. R. 141/ D. C. Lynch v. Tilden Producte & Co., 265 U. S. 315 44 S. C. 488: 68 L. ed. 1035. Pearkes, Gimston & Tee Ltd. v. Knight; Samme

v. Van. Tramp, (1901) 2 K. B. 825: 70 L. J. K. B. 1002: 85 L. T. 379: 65 J. P. 822: 50 W. R. 104: 17 T. L. R. 771: 45 Sol. Jo. 746: 20 Cox C. C. 46 D. C. Delhi Bather v. Corporation of Matrix, 1940 Mad. 221: 41 Cr. L. J. 552: 138 I. C. 150: 1939 M. W. N. 1224: (1940)

<sup>7.</sup> Burton & Sons v. Mattinson. (1902) 86 L. T. 770: 66 J. P. 628: 18 T.L. R. 545: 20 Cox C. C. 262 D. C.

sold though not pure mustard, was an article of the nature, subtance and quality of mustard and (inter alia) that matters or ingr dients added to the mustard were not injurious to health and were required for the production or preparation of an article of commerce in a state fit for consumption, Held, the finding that the article was of the nature, etc. of mustard could not be sustained; and the case must be remitted for Justices to explain what was meant by their last finding.1

Mustard oil. If an article is sold as mustard oil and is not in accordance with the prescribed standard for mustard oil, the offence is committed notwithstanding that there may be a placard or other advertisement enabling the public or the literate portion of the public to ascertain becore making their purchases that the oil is some other article than pure mustaid oil.2

Where petitioners purport to sell mustard oil for use as human food, and if the mustard oil which they sell is actually found on analysis to be not genuine in the sense that it is not the article which it purports to be or represents to be or if it falls below the prescribed standard the vendor becomes liable to penalty. In such a case it is not necessary to prove on behalf of the prosecution that the mixed oil would be injurious to public health. It is sufficient to show that the article is not what it purports to be or that it is not of the prescribed standard.3

It is correct that rape-seed and mustard seed have certain marked sin ilarities and that a small quantity of rape-seed oil is invariably found in mustard oil. But where the Public Analyst's report makes it clear that the proportion of rape-seed oil in the sample of what was sold as pure mustard oil is much more than would be found in the ordinary course, the persons found selling it can be convicted for exposing for sale and selling it.

For conviction of a person for having manufactured an article of food which was not of the nature, substance or quality which it purported to be there must be evidence directly implicating him in the manufacture of the article.4

The accused was exposing for sale or storing for sale mustard oil in which linseed oil was present. Accused choose to call that oil not as mustard oil but 'jalani' oil and alleged that he had not intended that it should be sold as an article of food at all. H.ld, that what was state I in the shop for sale was mustard oil which was an article of food and that as it did not compare to the prescribed standard accused was guilty.

The policy of the Act is to prevent either the sale or the exposing for sale or the keeping or st ring for sale of articles of food unless they are up to a certain standard of purity. But it cannot rightly be held that it is a sufficient defence for the accused merely to say that it was never intended by him that the things should be used for human consumption. It is quite clear that the mere placing of a lab I on a cunister containing some article, if in fact can be used as an article of food, will not help him in escaping a conviction.5

Milk is specially liable to be adulterated. The case with which milk can be tampered with either by the addition of water, the extraction of fat, or both has led to many prosecutions for adulterated milk.6

<sup>1.</sup> Sandys v. Markham, (1877) 41 J. P. Jo.

<sup>52</sup> D. C. Karinandan Sarda v. Emperor, 1935 Pat.

<sup>3.</sup> Rameshwar Chaudhury v. Purulia Munici-pality, 1933 Pat. 193.

Brij Mohan Das v. Emperor, 1948 All. 177.

<sup>5.</sup> Chairman, District Board v. Atul Chandra Pal,

<sup>1933</sup> Cal. 619: 1932 M W. N. 1350: 140 I. G 260: Cr. L. J. 16.
6. Public Proventor, Mulrus v. Punchakarla Soorma, 1941 Mad. 617: 42 Cr. L. J. 795: 195 I. C. 713.

To sell as milk a mixture of milk and water is to sell as food a substance which is partly food and partly not food, and which is therefore not of the nature, substance or quality which it purports to be.

Any person who sells milk which is not of the nature, substance or quality which it purports to be, would be liable.1

The knowledge and awareness of the purchaser is wholly immaterial as the object and policy of the statute is to protect the public by prohibiting the sale in any circumstances of adulterated milk or milk which does not come up to the prescribed standard of purity.2

Where a customer asks for 'milk' he should be understood to be des'rous of purchasing pure milk, and if he is supplied skimmed milk by the seller, who does not make it clear that the milk he was supplying was skimmed milk, he is guilty under the Act. Similarly, where a person gives out that 'milk' was for sale at his shop, he should be taken to offer to sell pure milk, and not skimmed milk, and if while he is offering to sell 'milk' he supplies skimmed milk, he is also guilty under the Act. The 'halwais' of Mirzapur, and possibly of other places, are to make it clear to their customers that they sell skimmed milk, as distinguished from pure milk, so as to leave no room for any deception.3

It was proved on an information under English Act, 1875, Sec. 6, that appellant who was an Inspector under the Act on asking respondent, a milk seller for 'milk', was supplied by respondent with milk which had been skimmed, and which was, in consequence as compared with normal milk as it comes from cow, deficient in butter fat to an extent of 60 per cent. Held, on these facts it was not proved that any offence had been committed by respondent against the provision of Sec. 6 of the English Act.4

It was proved on the information under English Act that appellant, who was a milk-seller, supplied respondent, an Inspector, on being asked for new milk, with a liquid which had been taken direct from the cow and had not been tampered with or adulterated, but which in consequence of the length of time which had elapsed since the cow had last been milked was deficient in fat to an extent of 30 per cent. the remainder of that fat having been absorbed by the cow during the unduly long interval between milkings. the appellant was rightly convicted of having supplied respondent with an article which was not of the nature, substance and quality demanded by him.5

Appellant asked respondent to supply him with a glass of hot milk, which she did. The milk was deficient in fats. The evidence was that the heating of the milk would not affect the percentage of fats and that the genuine milk after boiling would not have shown the results shown by the milk in question. Held, respondent should have been convicted of selling milk not of the nature, substance and quality demanded.6

On a charge of selling milk contrary to English Act, 1875, Sec. 6, the certificate of analyst stated that 10 per cent. of water had been added, but

Narayana Iyar, accused, petitioner, In re, 1933 Mad. 99.

M. ad., 99.

2. The Public Prosecutor v. Modi Kondayya, 1947 Mad. 184: (1946) 2 M. L. J. 311: 1946 M. W. N. 669: 59 M. L. W. 608: .31 I. C. 147: 48 Gr. L. J. 705.

3. Dukhi v. Emperor, 1936 All. 148: 1936 A. W. R. 192: 1936 A. L. J. 77: 37 Gr. L. J. 426.

4. Line v. Colins, (1384) 14 Q. B. D. 193: 54 L. J. M. C. 76: 52 L. T. 257: 49

J. P. 89: 33 W. R. 365: 15 Cox C. C. 677 D. C.

Smithens v. Bridge, (1902) 2 K. B. 13: 71 L. J. K. B. 555: 87 L. T. 167: 66 J. P. 740: 50 W. R. 686: 18 T. L. R. 575: 46 Sol. Jo. 486: 20 Cox C. C. 342 342.

6. Harringion v. Slater, 1920 90 L. J. K. B. 265: 124 L. T. 272: 85 J. P. 83: 87 T. L. R. 51: 18 L. G.R. 840: 26 Cox C.C.

that the milk was exceptionally good, the butter fut being above normal. The Justices therefore, having regard to all circumstances, thought that though the charge was proved the offence was of so trifling a nature that it was inexpedient to inflict any punishment and dismissed the summons. Held if the milk was exceptionally good after the adulteration they need not convict; but if it was only exceptionally good before, respondent should be convicted i

If a seller of the milk puts milk into churn and allows it to stand, well knowing that in the ordinary course of nature the cream in the milk will rise to the top, and then, after the cream has risen to the top, sells milk which is found to be deficient in milk fat and which is drawn from the bottom of the churn by means of a tap, he is guilty of selling milk which is not genuine and cannot maintain that the milk when it was sold was in the same condition as that in which it came from the cow.

If a seller of milk puts milk into a churn and allows it to stand, well knowing that in the ordinary course of nature the cream in the milk will rise to the top, and then, after the cream has risen to the top, sells milk which is found to be deficient in milk fat and which is drawn from the bottom of the churn by means of a tap, he is guilty of selling milk which is not genuine, and cannot maintain that the milk when it was sold was in the same condition, as that in which it came from the cow.

Respondent, a retail milk seller, was charged with contravening English Act, 1875, Sec. 6, by selling to the prejudice of the purchaser milk which was not of the nature, substance, and quality demanded by the purchaser. The milk was proved to be deficient in milk fat containing according to analyst's certificate only 1.61 per cent. of milk fat instead of 3 per cent. as required by the English Milk Regulations, 1901. The milk was put into the churn in the state in which it came from the cow, and it had not been directly tampered with. The deficiency in the milk fat was due to the fact that the cream in the milk had risen to the top of the churn and the sample of milk was drawn from the bottom of the churn by means of a tap after the Respondent had given instructions to his servant to stir the milk before starting on his round, but these instructions had not been carried out. Held, respondent had been guilty of offence charged, having sold as milk something which was not of the nature, substance and quality of the article demanded by the purchaser.2

When milk has been sold at it comes from the cow, the fact that by reason of the cow not having been fully milked the milk is deficient in milk fat does not make the sale an offence under Sec. 6 of the English Act, 1875.

Respondent was the owner of one cow which had recently calved, and he sold to appellant a half pint of milk then taken from the morning's milking. The cow was not fully milked, some being left for the calf. addition to or abstraction from the milk sold except for the necessary purposes of straining impurities, but the milk was found deficient in milk fat to the extent of 13 per cent. On a charge of supplying milk not of the nature, substance and quality demanded by the purchaser, the Justices found that the deficiency was due to the manner in which the cow had been milked but that as it had been sold as it came from the cow without abstraction or addition, and it was of the nature, substance and quality demanded by the purchaser and they dismissed the charge. Held, the decision was right.3

Banks v. Wooler, (1900) 81 L. T. 785: 61 J. P. 245: 19 Cox C. C. 432 D.C.
 Bridges v. Griffin, (1925) 2 K. B. 233: 94 L. J. K. B. 728: 133 L. T. 177: 89 J.P. 122: 41 T. L. R. 523: 69 Sol. Jo. 558

Grigg v. Smith, (1917), 87 L. J. K. B. 488: 17 L. T. 417:92 J. P. 2: 33 T.L R. 541: 61 Sol. Jo. 677: 15 L. G. R. 769. 3.

The egent of respondent when asked for pint of new milk sold to the purchaser milk which was 28 per cent. deficient in butter fat. The milk was sold as it came from the cow, inferior quality being due to the fact that the animal had some exceptionally poor pasture on which to graze. On information under English Act, 1875, the Magistrate found that the milk so'd cas not of merchantable quality, but as it was sold as it came from the caw he was bound to dismiss the case. Held, the decision of the Magistrate was right.1

Appellant was charged with selling milk not of nature, substance and quality demanded. The Public Analyst stated that a quantity of extraneous matter was present in very microscopical quantities and that one of them probably came from cloths used in straining the milk, which was offerwise good milk. The Justices without calling on the defence dismissed the charge. Held, this was an attempt to set up an impossible standard and no prima facie case had been estab ished against respondent, and the charge had been rightly dismissed.2

When the charge framed against the accused does not state whether it was buffalo's milk or cow's milk that was sold by him contrary to law, the sample in respect of which offence is said to have been committed must be dealt with as if it were cow's milk and if the sample is not below the minimum

prescribed for cow's milk the accused shall not be held liable.3

Hot milk. The Act itself makes no distinction between 1aw and hot milk and provides no exception in the case of hot milk. To recognize and give effect to any such exception on a priori grounds would be contrary to the spirit and intendment of the Act and the rules and would enable a milk vendor to adulterate milk to any extent he pleases and escape liability altogether by

merely applying some heat to the milk.

Hot milk is both in the English law and under the Indian Act nothing but milk in its natural condition which has been made hot and it should contain the prescribed minima of milk fat and milk solids. When it is found that on account of adulteration with water or obstruction, those percentages diminished and that the sample taken of the adulterated mi'k discl sed that in the place of 4.5 per cent. there was only 1.5 percentage of milk fat, there can be no doubt that the person who sold the milk whether in raw state or as hot milk infringed the prohibition and is punishable under the Act.4

Honer. Honey sold with admixture of 38 per cent of cane sugar rendered the article adulterated. Cane sugar might be innocuous mat-rial but 38 per cent. of it certainly increases the bulk, weight or measure of the honey and

the fraudulent intention of the seller is obvious.5

Coffee. The accused was charged under Sec. 5 (1) (b), Madras Act, read with Rule 40 (b) of the rules frame thereunder for having mix d 50 per cent. of military flower, coffee husk and cereal with coffee prepared by him. On the labels on the packets which were seized by health officer appeared the words "Coffee powder 50 per cent. Indian chicory 50 per cent." The accused was convicted by the magistrate on the charge of selling adulterated coffee and the goods seized were ordered to be destroyed under Sec. 12 of the Act. conviction was on appeal set aside by the Sessions Judge who however concurred in the order for the destruction of goods. Held, that the goods seized were adulterated wi hin the meaning of that Act and the order of destruction was not only a lawful order but was very proper one.6

Mad. 971: (1939) 2 M. L. J. 649: 1939

M. W. N. 866.

The Public Prosecutor v. Modi Kondayya, 1947 Mad. 184.

Public Prosecutor v. Sannidhi Sriranganaya-kulu, 1949 Mnd. 629: 50 (h. L. J. 833: 1949 M. W. N. 282: (1949) 2 M. L.J. 15. In re. Ismail Abddla Sout, accused, Petersner.

1945 Mad. 68.

<sup>1.</sup> Williams v. Rees, (1918) 87 L. J. K. B. 639: 118 L. T. 356: 82 J. P. 97: 16 L. G. R. 159: 26 Cox C. C. 173 D. C. 2. Kenny v. Cox, (1920) 89 L. J. K. B. 1258: 1 14 L. T. 221: 35 J. P. 70: 37 T. L. R. 49:37 L.G.R. 844: 26 Cox C.C. 659 D.C. 3. In Natl May 1939 Mal. 384: (1939) Mad. 371: (1939) 2 M. J. 1649: 1939

Ghee. It is not necessary in order to secure a conviction under the Act to prove that the seller of the ghee is engaged regularly in the sale of that commodity. It is sufficient to prove that the accused actually did sell ghee which was below quality.1

A sample of ghee was duly seized and sent to the Public Analyst to Government for test. The analyst said that the sample of ghe contained a large portion of an ingredient foreign to pure ghee and the sample was gro sly adulterated. Held, that the use of the word 'adulterated' necessarily meant that the sample of ghee sent to the public analyst contained an article which was used to debase the ghee and therefore could not have been derived from milk at all.2

Where a shopkeeper consistently states that the article he was selling was not ghee but coconut oil and that it was not intended for food but for the manufacture of soap, the impression of the Food Inspector that he was purchasing ghee will not make the article in question adulterated.3

A person selling sweetmeat jalebi fried or cooked in fat not derived from milk or cre in without any publication of its constituents commits the offence under the Act, namely selling to the prejudice of the perchaser sweetmeat not of the nature and quality which it purports or represents to be.1

What flour with mixture of barley flour. The Act does not exempt from punishment a person who sells, as pure wheat flour, a flour which is not pure, but contains some mixture of barley, however slight. The fact that the amount of adulteration is negligible or is universally tolerated may affect the sentence but cannot affect the conviction.5

If the purchaser demands pure wheat flour and the seller professes to sell pure wheat flour, which turns out on analysis to have even a negligible mixture of barley flour, warranty of quality expressly given is clearly broken and the seller is guilty of an offence. If the purch user deman is pure wheat flour but the seller warns him that a negligible percentage of barley flour is mixed with or may be found to be mixed with it, as is generally the case, it would seem that the seller cannot be held to be guilty of any deception or misrepresentation if on analysis a mixture of burley flour is detected to an extent which is negligible and which does not prejudice the purchaser.6

Mixting of inferior oil with suprior oil. The fact that a merchant mixes inferior oil with superior oil necessarily leads to the conclusion that it is the intention of the merchant to sell the mixture as superior oil, otherwise the action of the merchant would be unnatural and mysterious. The proportion would not matter at all.7

It is no defence for a prosecution under the Act to allege that the accused was ignorant of the nature, substance or quality of the article of food sold.8

16. Injurious to health. In determining whether an article of food is injurious to health regard must be had not only to the probable effect of that article on the health of the consumer but also to the probable

- 1. Emperor v. Nur Ahmad, 1934 All. 842:
- Emperor v. Nur Ahmad, 1934 All. 842: 8 A. W. R. 783: 1934 A. L. J. 839: 35 Cr. L. J. 1229: 151 I. C. 114.
   Ram Dayal Gupta v. Emperor, 1927 All. 730 (1): 28 Cr. L. J. 39: 99 I. C 71.
   Bohva Raghubar Dayal v. Emperor, 1931 All. 705: 1931 A. L. J. 690: 133 I. C. 418: 32 Cr. L. J. 1031: 1431 Cr. C.
- Public Prosecutor v. Paramesware Aiyar, 1947 Mad. 428: (1947) 2 M. L. J. 71:
- 1947 M. W. N. 408: 60 M. L. W. 431.

- Budh Sen v. Emperor, 1934 All. 329: 35 C. L. J. 681: 148 I. Cr. 384.
   Mithan Lal v. Emperor, 1934 All. 439: 149 I. C. 222: 35 C. I. J. 913.
   The Public Prosecutor v. Neg Ma Sechagini Rao, 1949 Mad. 155: 50 Cr. L. J. 198: 1948 M. W. N. 484: (1948) 2 M. L. J.
- 8. See (1955) 1 M. L. J. 309.

cumulative effect of articles of substantially the same composition on the health of the person consuming such articles in the ordinar, quantities. It has been held that the food will be deemed injurious to the health if it is shown to be injurious to a substantial portion of the community.

17. Abstract frem articles of food or parts thereof. Section 2(1) (d) deals with the abstraction before sale and is aimed at the practice of

abstracting cream from milk.

The climination of a harmful ingredient from a proprietary food which, without such ingredient, would not be the same, does not constitute an adulteration by the abstraction of a valuable constituent.<sup>3</sup>

18. Addition of poiseneus substances. The addition of poisonous substances to an article of food in such minute quantities that the health of the consumers cannot possibly be injured is not condemned by the provisions of the Act as under clause (h) of sub-sec. (1) of Sec. 2 an article of food shall be deemed to be adulterated if it contains any poisonous or other ingredient which may render such article injurious to health.<sup>4</sup>

19. Colouring matters. Artificial colouration of food is prohibited except as specifically permitted by the Prevention of Food Adulteration Rules, 1955. Where an extraneous colouring matter has been added to any article of food there shall be written on the label attached to any package of food so

coloured a statement in capital letters as below:

## ARTIFICIALLY COLOURED

This rule does not apply to cheese (all classes), ice-creams, mixed ice-cream, icing sugar and gelatine desserts (Rule 24). Caramel may however be used without label declaration (Rule 25). Addition of inorganic colouring matters and pigm at however harmless is prohibited (Rule 27).

Colouring matters which may be added to article of feod.

1. Natural colouring matters (Rule 26)

Carotin and Carotenoids.

Chlorophyl.

Lactoflavin.

Caramel.

Annatto. Ratanjot.

Saffron.

Curcumin.

## 2. Coaltar dyes (Rule 28)

Colour	Common name	Colour index	Chemical class
1. Red	Ponceau 4 R	185	Azo
	Cermoisine	179	Azo
	Red 6 B	. 57	Azo

Halsbury's Law of England, 3rd Ed., p. 483.

Gallen v. M'Nair, (1903) 99 L. J. 358: 23 Dayst 79, 82.

<sup>3.</sup> United States v. Forty Barrels and Twenty

Kegs. 241 U. S. 265. 36 S. Ct. 573:

United States v. Forty Burre's and Twenty Kegs, 241 U.S. 265: 36 S. Ct. 573: 60 I. Ed. 995.

Colour	Common name	Colour index	Criminal class
	Red F B	255	Azo
	Acid Magenta	692	Triphenylmethane
	Fort Red E	182	Azo
2. Yellov	Tattrazine	640	Pyrazolone
	*Sunset Yellow FCF	0 0 0	Azo
3. Blue	Blue VRS	672	Triphenylnethane
	Indigo Carmine	1180	Indigoid
4. Black	Erilliant Black BN		Bisazo.

## \*F. D. & C. No. 6

Use of permitted coaltar dyes in or upon any food other than those enumerated below is prohibited.

(a) Ice-cream including mixed ice-cream.

(b) Dairy except milk, dahi, b tter, ghee, chhant, condensed milk, creamed baby foods.

(c) Smoked fish.(d) Egg preparation.

(e) Biscuit, pastry, confectionery and sweets.

(f) Fruit products.

(g) Non-alcoholic beverages except tea, cocoa and coffee.

(h) Custard powder.(i) Jelly crystals.(j) Soap powder.

(k) Luncheon or Pork Luncheon meat (Rule 29).

The maximum limit of permitted coaltar colours or mixture of permitted coaltar colours which may be added to any food shall not exceed 1.5 grain per pound of the final food or beverage for consumption (Rule 30). The colours used for preparation of any article of food must be pure and free from harmful impurities (Rule 31).

20. Clause (v): English Law. For definition of food under English Food and Drugs Act, 1938, see notes under clause (1).

Food. In Uttar Pradesh Pure Food Act, 1950, the expression "food" was defined in Sec. 2 (g) as follows.

"Food" means any article of food or drink, other than a drug, water, wine, liquors or other excisable articles (intoxicants) used for human consumption including—

- (i) any substance which is ordinarily mixed in the preparation of food;
- (ii) any flavouring matter or condiment; and
- (iii) any colouring matter used or intended to be used.

Provided that, notwithstanding anything contained in this definition the addition of any colouring or flavouring matter or condiment to an article used as food or drink shall be deemed to be the addition of a substance to food.

Section 2 1, (r) of the present Act defining "food" it enacted on the line of Sec. 2 gr of the U. P. Pure Food Act, 1950 and a comparison of the two dennitions shows that they are more or less similar with different phresen-

logy.

The definition of food given in this Act is very general and any article used for food or drink by man other than drugs or water would be included in the word food'. The definition includes articles and substances used in the preparation of human food and also includes flavouring matters or condiments. Adulteration or articles used or admixed in the preparation or composition and flavouring matters or condiments is made punishable under the present Act.

In any item of food prepared out of adulterated substance is presented to the public for sale in any manner, the shopkeeper or any one who deals with such things will come within the purview of this Act.

Under the Madras Prevention of Adulteration Act it was held in Crown Prosecutor, Madras v. Ramanathan Aiyar.1 that the ghee or oil or other fatty substance used for frying sweetmeat is not an ingredient of sweetmeat. If that dec sion had been in force any material used in the preparation of food would not be ingredient of the food prepared. But to get over the decision of the Bench the State Government altered the rules and brought an amendment which was publish d in the Fort St, George Gazette, dated 15th January, 19462 whereby they enacted that when a sweetmeat is fried or cooked in the such ghiz shall be deemed to be an ingredient of sweetmeat.

21. Question of fact. The question whether any article is 'used for food or drink' is one of fact.

American cases. Except as used in some statutes the word "food" includes that which is drunk as well as that which is eaten, for nourishment. As used in statutes, it may include food for animals as well as food for human beings although in common use the word "feed" is employed when referring to articles fed to animals.

In general sense of the term, food is "that which is eaten or drunk for nourishment".

Other definitions. (1) Nutritive material taken into the body for the purpose of growth, repair, or maintenance.3

- (2) Whatever supplies nourishment to organic bodies.4
- (3) Further definitions, see 26 C. J. P. 750 note 1 (a).

Cooking as test. The fact that an article has not been cooked is not decisive as to whether it is food.5

I. 1946 Mad. 514: (1946) Mad. 514: 223 I. C. 118.

2. G. O. No. 3097, dated 30th November, 1805, Education and Public Health

Department. 3. N.C. Colum v. R. J. Reynolds Tobacco Co., 171 S. E. 73 : 205 N. C. 213; l'a-Commonwealth v. Pflaum, 84 A. 842 236 Pat. 291. Ann. Cis. 1913 E. 1.91: No k v. Corocola Bottling Works of Pittsburgh, 156 A. 537: 102 Pa Super. 515; Tex. Ligart & Mor. Tobacco Co. v. Wallace, Civ. App. 69 S. W. 2 d. 857.

4. N. C. Corum v. R J. Reynolds Tobacco Co., supra; Pa. Commonwealth v. Pflaum. supra; Tex. Liggett & Myers Teb: Co. v. Mallace, supra.

Totten v. Pittsburgh Malting Co., Pa. 232 F. 694: 145 C. C. A. 620, affirmed 38 S. Ct. 3: 248 U. S. 1: 63 L. Ed.

Victuals. Commonly refers to food ready to eat.1

Food and drink distinguish d. (1) Some authorities point on that there is a plain and fundamental distinction between food and drink and that in common usage and understanding they are comple neatary and as a late. But

(2) Also it is said that in popular usage the term "foot" seems to simply solid material, such as meat, bread, etc.; that the more mut that mill, as all other liquids, may, in the terminology of the medical prof sion and dictionaries, by classified as food cannot deprive the consuming public of its own desinition; and that, to the man on the street, milk means a liquid and not food,3 It includes lards,4 milk,2 milk chocolate,6 cheese,7 colles,5 combine to,9 confectioner., 10 popeorn, 11 and also oil, 12 but not tale, 13 tobacco, 14 was sy, 15 or

In food statutes the term usually includes all articles used for food or drink by man. 17

Terms other provisions' and all other provisions, following commercian of particular articles of fool in other statutes, are the equivalent of "fool" as defined in pure food statute.18

Particular substances included either expressly or by construction -

- (1) Baking powder. 19
- (2) Coff. e. 20
- (3) Confectionery and condiments.<sup>21</sup>
- (4) Eggs. 22
- (5) Fruits and vegetables.28
- Fig. 1 v. 6.24 b. Diming H. U. C. 120 N.E. 407 : 231 Alass, 65.
- Commonwealth v. Kebort, 61 A. 895: 212 Pa 289; Nort v. C rede B Wing Works
- of Putthingh, super.
  Ridto Leckostte v. 1481 Browline
  Congration, 11 N. Y. S. 2 d. 39 : 170 Misc. 754.
- U. S. Totten v. Pittsburgh Malting Co.,
- Itt. Mele v. Beifeld, 191 III. Aup. 304 : 40 C. J. p. 703, note 3 a. Divers view see supra note 1.
- Tex Saleh v. State, 239 S. W. 207: 91 Tex Or. 316: 21 A. L. R. 752. U. S. Kraft-Phonix Cheese Corporation v.
- Consolidated Beverage, Cust & Pat. App.
- 107 F. 2d, 1004. U. S. Tillmin & Benlel v. California. Packing Corporation; C. C. A. Cal. 63 F. 2 d. 498.
- U. S. Savage v. Storell, C. C. Ky. 171 F. 566.
- 10. O'no Andrews v. Tax Commission of Ohio, 21 N. E. 2 d. 105, 107; 135 Ohio St. 374; Pa Commonwealth v. Pflaun, 84 A. 842 : 236 Pa. 294, Ann. Cas. 1913 E. 1287, affirming 50 Pa Super 55.
- U. S. Krufi-Phenix Cheese Corporation v. Consolidated Beverage. supra.
- U. S. Totten v. Pittsburgh Malting Co., 12.
- supra. U. S. U. S. v. R. C. Beokal & Co., Mass
- 221 F. 885: 137 C. C. A. 455.

  14. Ill. City of Chicago v. Arbuskle Bros., 176 N. E. 761: 314 III. 597: N. C. Corum v.

- R. J. Republic Terror Co., 171 S. L. 18: 205 N. C. 213: 20 C. J., p. 750, note l(g).
- N. T. Belier V. Mon. t. 240 N. Y. S. 722: 232 App. Div. 3.
  N. T. Peatle V. Fr. dls r Battling Worlds, 163 N. Y. S. 570: 35 N. Y. Gr. 62 reversed on other grounds 171 N. Y. S. 723 + 184 App. Div. 45
- reversed on other grounds 171 N. Y. S. 733: 184 App. Div. 45.

  Ill. City of Chicago C. Merenge C. 19 N. 1.2 and the result of 111.

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  City of the Section of 112 and the result of 113.

  City of the Section Onio Yorkem v. Gloria, Inc. 17 N. E. 2d. 731: 124 Ohio St. 427.

  Inc. 17 N. E. 2d. 731: 124 Ohio St. 427.

  Inc. 17 N. C. 2d. 731: 124 Ohio St. 427.

  26 C. J. P. 750, note 2.

  City of Chicago C. City of Chicago Co. 22

  N. 1. 2 d. 103: 3.2 III. 33.

  Reyal Baking Powder Co., v. Emerson,
- 18.
- Royal Baking Powder Co., v. Emerson, C. C. A. Ark. : 270 F. 129 : appeal dismissed 43 S. Ct. 166 : 200 U.S. 752 : 67 L. 1 d. 196.

  Arbuckle v. Bla Linn, Ohm 113 F. 646 : 51 C. C. V. 122 : 65 L. R. A. 354 : appeal di ni 2 d. 1 S. Ct. 148, 191 U.S. 40 40 U.L. 1 1 2 2 9 19.
- U. S. 40 r : 48 L, L, L, 2 39. 21. Crackerjal, Ge, v. Cats of Change, 161 N, E, 479 : 330 Hl, 320 : 59 A, L, R, 287 : 12 C, J, p. 398 : note 74 (d : 26 C, J, 775) P. 750: note 2 (a).
- 22. Newton Tea & Spice Co. v. U. S., C. C. A. Ohio, 288 F. 475: 26 G. J. p. 740, note
- 23. Ferch v. People, 71 p. 2 d. 712 : 101 Colo. 471.

- (6) Maple syrup.<sup>1</sup>
- (7) Meat.<sup>2</sup> (8) Milk.3
- (9) Soft drinks or carbonated beverages.4

(10) Wine, or by man and other animals, whether simple, mixed or compound.7 In construing certain statutes, however, it has been held that the term "food" does not include a beverage or drink,8 and it is also held that, while the usual pure food statute which expressly provides that the term "food" shall include articles used for drink would undoubtedly cover the ordinary beverage, it does not comprehend an article such as whisky, which at the time is outlawed as a beverage.9 While articles us d for medicines and also used for food are within some food statutes,10 concentrated mineral spring water is not a food within the meaning of the Federal statute where it is not in its original condition as it came from the earth and the processes of separation of the constituent drug elements have been carried to the extent that the water can no longer be used as a beverage, but only in small quantities or desis as a drug. 11 A legislative body may provide its own definition of food, under a law which it enacts, and when it does so, that definition must necessarily control regardless of dictionary definitions, 12 or even, though it goes beyond the ordinary meaning of the term. 13

Feed is a word with a very definite and well-understood meaning.14 It has been defined as that which is eaten; especially, food for beasts; fodder, feeding stuff; pasture hay, grain, ground or whole; an allowance of provender given to a horse, cow, etc. as a feed of corn or oats. 15

Similar definitions. (1) Food for cattle 16 (2) food, properly for domestic animals.17

In its ordinary sense it is used with reference to cattle and hogs. 18 It is employed in common use as referring to articles to be fed to animals, and especially in connection with the names of particular grains or vegetables, to describe the bye-products of such grains or vegetables, consisting of the residue after subtracting those parts which are useful for human food. 19

- Ferch v. People, supra.
- 3. Forch v. People, supra: 26 C. J. p. 750, nore 2 (b).
- 4. City of Chicago v. Chicago Beverage Co., 22 N. E. 2d. 703: 372 III. 33. 5. U. S. v. Sweet Valley Wine Co., D. C.
- Ohio, 208 F. 85. U. S. — Union Dairy Co. v. U. S. III. 250 F. 231: 162 G. C. A. 357: 26 G. J. p. 751, note 3.
- O. J. p. 751, note 3.
   Ill. City of Chicago v. Arbuckle Bros., 176
   N. E. 761: 344 Ill. 597: Ohio To kem v.
   Gloria Inc., 17 N. E. 2d. 731: 134 Ohio
   St. 437: 26 C. J. p. 751, note. 4.
   Pa-Net v. Concella Bettling Works of
   Pittshoogh, 156 A. 537: 102 Pa. Super,
   515: 26 C. J. p. 751: note 5.
   N. Y.—Balling v. Mount vebra.
- N. Y .- Bilion v. Mount, supra.
- 10. U. S.-Chicago v. Scovell, C. C. Ky. 171 F. 566: Mich.—Autt Fool (n., v. Bird, 112 N. W. 701: 148 Mich. 631: 118 Ann S. R. 601.
- 11. U. S .- Goodwin v. U. S., C.C.A. Ohio, 21 1d. 200.

- 1. U. S. v. 52 Drums Maple Syrup, C. C. A. 12. Wis-McCarthy v. State, 175 N. W. Vt. 110 F. 2d 914. 785: 170 Wis. 516: 26 C. J. p. 751,
  - 13. N. Y .- Boliver v. Monnat, supra.
  - Iowa. Aetna Casualty and Surety Co. of Hartford, Conn. v. Kimball, 222 N. W. 31, 33: 206 Iowa 1251.
  - Iowa Aetna Casualty and Surety Co. of Hartford, Conn. v. Kimball, 222 N. W. 31. 33 206 Iowa 1251, quoting Webster New Int. D.; Okl.-Marry v. Cherry, 41 p. 2d. 82, 84: 170 Okl. 469.
  - 16. Iowa.—Aetna Casualty and Sweety Co. of Hariford, Conn. v. Kimball, 222 N. W. 31 L. 33: 206 Iowa 1251: quoting Corpus, Juris.; La—Alas Feed Products Co. v. New Orleans, 37 So. 531, 533, 113 La 611.
  - Hage v. S. L. Wellman Co., 187 N. W. 401, 406: 217 Mich. 537.

    Iowa—Aetna Casualty and Surety Co. of Harlford, Conn. v. Kimball, 222 N. W. 31, 33: 206 Iowa 1251 quoting Bouvier. 1.. 1).
  - U. S.-U. S. v. One Cart Load of Corns Horse & Mule Food, D. C. Ala, 188

As including unground corn. 't has been said that to non-technical persons of common understanding unground corn is regarded as feed for domestic animals and poultry. Fodder is a word derived from the Anglo-Saxon word "foda", and is defined as meaning food, that which is fed out to domestic animals; especially coarse food for cattly, horses, and sheep, as hay, veretables, etc.2 Similarly expressed: "Food for horses or cattle." Peanuts may be regarded as within the term.4

- 22. **Chewing gum.** It has been he'd that chewing gum is not a foo 1.5
- Wines, liquors or other excisable articles. Wines, liquors or other excisable articles (intoxicants) are articles of food.
- 24. Mustard and linseed oils. Mustard and lineed oils are articles of food,6 Not only mustard oil but mustard seed is also food. Mustard seeds are used in cooking, etc. and are also used with spices for flavour.7
- 25. Fuel oil. Fuel oil containing mustard oil is not an article of food.8 In Public Prosecutor v. Kachi Mohideen Marai Kuyar, however it was he'd that even it gingelly oil mixed with ground-nut oil is sold for lighting purposes and not as food the consumer may use it as food and it would be deleterious to his health. Hence provisions of the law dealing with food would be attracted for whateve purposes the consumer may take it or the seller may sell it.10
- 26. Katha and pan. Food has been described as including every article used for food or drink by man other than drugs or water and alimat rid used or admixed in the composition or preparation of such article and shall all o include flavouring materials and condiments. Katha, which is commonly used in pan extensively by human beings in this country comes within the definition of food as given in the Act. The definition is wide enough to include kutha as an article for food.

Chamber's Twentieth Century Dictionary gives the meaning of "foed" as -"What one feeds on: that which, being digested nourishes the Lody: whatever sustains or promotes growth".

Pan is an article which one feeds on. It is something, which being digested, nourishes the body and at least something which, according to common opinion, sustains or promotes growth. Upon the dictionary meaning itself, katha, which is used as an inpredient in the preparation of pan, would be an article of food within the meaning of that term under the Act. II

Clause (ix): "Misbrauded". The definition of 'misbranded' is very exhaustive and even articles like coloured, flavoured, or coated, powdered or polished articles have been included in the definition. Under Secs. 5 and 7 sale or import of a misbranded article is a distinct offence.

Standard of comparison. The standard of comparison is not that of the experts. But it is that of the lay public of the unwary purchasers. It is not necessary that the resemblance should be in all respects but it must be such

- Hage v. E. L. Wellman Co., supra.
- La-Fallin v. Stovell, 74 So. 911, 915:
- 141 La. 220. Black, L. D.
- La—Fallin v. Stovell, supra.

  Bennett v. Tyler. (1900) 64 J. P. 119:
  25 Digest 7073.
- State v. Bal Makund, 1954 All. 97; Kamla Kant v. State, 1951 All. 595: 52 Cr. L.J.
- 7. Laxmi Narain v. State, 1953 All. 713:

- 1953 A. L. J. 374: 1953 A. W. R. (H. C.) 367.

- 8. Niabi Kante Shah v. Emperor, 1943 Cal.
  468: 45 Cr. L. J. 111: 209 H. C. 229.
  9. 1948 Mad. 218: (1947) M. L. J. 456:
  60 M. L. W. 744: 1948 M. W. N. 50.
  10. In te Vinlat Brimme, 1949 Mad. 623:
  50 Cr. L. J. 839: (1949) 1 M. L. J.
  198: 1949 M. W. N. 294.
  11. Chitter Mal v. State, 1954 A. W. R. (H.C.)
  694: 1954 A. L. J. 612.
- 604: 1954 A. L.J. 612.

as to be likely to make unwary purchasers suppose that they are purchasers the article to which the resemblance relates.1

- 28. "Labelled"-"Scaled"-Meaning. Neither the word "labelled" nor the word "sealed" mecessarily means that it should contain the nance of the manufacturer. All that is required is that it must be distinctive from which the maker or manufacturer or the firm could be easily traced.2
- 29. Clause (x): Package. A tub standing at the back of the counter from which margarine is scooped to be supplied to a custom r is a 'package.'
- 30. Clause (xiii): Sale. The word 'sale' is defined in Se . 4 of the Indian Sales of Goods Act, 1930 which is reproduced below:

"Sale and agreement to sell. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

- (2) A contract of sale may be absolute or conditional.
- (3) Where under a contract of sale the property in goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future tim: or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.
- (4) An agreement to sell becomes a sale when time elapses or the conditions are fulfilled subject to which the property in goods is to be transferred."

The definition of 'sale' under the present Act has been made much wider than in the Sales of Goods Act, 1930. It covers-

- (i) sale of any article of food for cash, or on credit or by way of exchange whether by wholesale or retail provided the article is sold for human consumption or use or for analysis;
- (ii) agreement for sale; (iii) an offer for sale; (iv) exposing for sale;
- (v) having in possession for sale; and

(vi) an attempt to sell.

The definition of 'sale' under the present Act is somewhat similar to the definition of 'sale' in Sec. 3, clause (b), of the Punjab Pure Frod Act, 1929 (8 of 1929).

In Emperor v. Prom Singh,4 it was held that the definition of 'sale' in the Punjab Pure Food Act, 1929, is so widely worded that it includes not only actual sale but almost any transaction which a seller, be reteiler or a commission agent, undertakes previded only that the ghee is intend deffor sale for human consumption or use." But in the pres nt Act scope of that definition has been further amplified by adding the words "or for analysis." Hence a sale for the purpose of analysis under the Act is a sale within the meaning of Sec. 2 (xiii).

A hahaai in possession of ghee below standard can be convicted for having in possession for sale adulterated ghee although he does not sell ghee as such but sells sweetmeats. The Adulter ton Act applies not only to the ale of the

- 1. Walter Good v. Avera, (1872) 5 H. L. 508; Nagendra Nath Saha v. Emperor, 1930 C.J. 274: 127 I.C. 555: 31 Cr. L. J. 1227: 31 (1 W. N. 339: 57 Cal 1153.
- F. Grow v. Shib Da. M. Marini, 1923 Pat. 213: 9 P. L. T. 434: 29 Cr. L. J. 75: 106 I. C. 587.
- 3. McNair v. Horan. (1904) 91 1. T. 555: 68 J. P. 518: 2 L. G. R. 1239: 20 Gax C. 7241).C.
- 4. 1911 Lah. 420; (1911) Lah. 210; 46 Cr. L. J. 135; 216 I. C. 190. 5. Dewan Singh v. Emperor, 1937 Lah. 702; 39 P. L. R. 459: 171 I. C. 16.

simply as such but does apply to the sale of articles of food of which it is necessary ingredient.1

A body corpo ate has got a separate existence apart from its individual members and when an article belonging to this body corporate is transferred to one of its individual members for a consideration, it cannot be said that it does not amount to a sale under Sec. 4, Sale of Goods Act. Hence in the case of the Co-operative Milk Society registered under Madras Co-operative Societies Act, VI of 1952, a transaction of the delivery of adulterated milk to one of its individual members for a price is a sale within the meaning of the Act is an offence.2

In Public Prosecutor v. Srinivasa Rao, 3 Lakshmana Rao, J. held that a secretary and an accountant of a co-operative society supplying butter to the Sanitary Inspector under Sec. 14, Madras Prevention of Adulteration Act, cannot be convicted under 5 (1 (d) and Rules 24, 28 and 29 formed under Sec. 20 2 as supply of sample to the Sanitary Inspector under Sec. 14 is not a sale nor can the secretary or the accountant be said to offer the butter for sale.

Horwill, I. dealt with this matter at some greater length in In re Kanakyya,4 as follows:

"The charge against the petitioner was of offering ghee for sale; but it was argued that he would be guilty of selling the ghee. A sale is a voluntary transaction, even when it is preceded by an agreement to sell. When a person exhibits articles in his shop he is making a general offer to sell them, and any person who comes into the shop and offers the price accepts his offers but the intending purchaser cannot use physical force or threats to compel the owner to part with the goods. If he does, the transaction is not a sale. If the Sanitary Inspector had not exercised his powers under Sec. 14, Madras Prevention of Adulteration Act, but had merely tendered the money and the petitioner had voluntarily handed over the goods, then there would have been a sale: and the fact that it was subsequently found that the goods were required not for consumption but for analysis, would make no difference to the nature of the transaction that had been entered into. In this case, the petitioner would presumably not have parted with the goods voluntarily when he knew that they would be used for the purpose of bringing a case against him and his master. The petitioner was not therefore guilty of selling ghee. Lakshmana, J., in a similar case held that the parting with a commodity when it is demanded by the Sanitary Inspector in the exercise of his power under Sec. 14 of that Act did not amount to a sale."

These rulings were considered by Kuppuswami Aiyer, J. in Public Prosecutor v. Nermana Singh,5 by Govinda Menon, J. in Public Proceutor v. Ramchandrayya,6 and by Rama Swamiji, J. in Public Prosecutor v. Dada Haji Ibrakim Helari. The reasoning upon which these three decisions dissented from the two prior decisions, set out by Govinda Menon, J. in Public Presentor v. Ramchandrayya,8 as follows:

<sup>1.</sup> Nebhandas Hollaram v. Emperor, 1939

Nebhandas Hollaram V. Emperor, 1939
 Sind 337: (1940) Kar. 91: 185 I.C. 832.
 Public Prosecutor V. Y. Ramchandrayya,
 1948 Mad. 329: 49 Cr. L. J. 395:
 (1948) 1 M. L. J. 117: 61 M. L. W.
 114: 1948 M. W. N. 159.
 1938 Mad. 541: 39 Cr. L. J. 735.

<sup>4. 1942</sup> Mad. 609: 43 Cr. L. J. 863.

 <sup>1944</sup> Mad. 236: 45 Cr. L. J. 724.
 1948 Mad. 329: 49 Cr. L. J. 395.
 1953 Mad. 251: 1953 Mad. Cr. L. J. 479.

<sup>8. 1948</sup> Mad. 329.

"In 1951 Mad. 236, Kuppuswami Aiyar, J. has held that when a Sanitary Inspector purchased milk from the accused, tested it and found that it was adulterated, the transaction amounted to a purchase and therefore the accused was guilty under Rule 29 (b) of the rules and Sec. 5(1)(b) read with Rule 27 of the Madras Prevention of Adulteration Act. Moreover, in this case, Ex. P. 2, the receipt contains an admission by the second accused that he was selling buffalo milk to the Maruti Vilas Coffee Hotel and transaction by which P. W. I got the sample is also admitted to be a sale. Apart from the admission contained in Ex. P. 2 when Mr. Venkatasubbiah exchanged money consideration for the milk, he was acting as a purchaser and the society a separate legal entity, was performing a contract of sale in delivering milk. Therefore it may even be unnecessary to decide whether the transaction with P. W. I was a sale at all, even though I am convinced that it is also a sale."

The definition of sale in the present Act also makes it clear that a sale for the purposes of analysis will not cease to be a sale. When a Sanitary Inspector purchases butter for the purpose of analysis the transaction amounts to sale.1 Even if the purchaser is a public officer an offence is committed in respect of adulterated goods purchased by him as such

officer.

In Public Prosecutor v. Narayana Singh,2 Kuppuswami Aiyar, J. has held that when a Sanitary Inspector purchased milk from the accused, tested it and found that it was a dulterated the transaction amounted to a purchase and therefore the accused was liable.

The price of ghee being necessarily included in the price of the meal, the service of ghee by a hotel-keeper to his customers with their meal amounts to sale. The acquittal of the accused on the ground "that it cannot be said

that the ghee is sold to the customers" is untenable.3

Tile fact that purchase price was not immediately paid on the delivery of the article does not make it any the less sale. The liability of the purchaser to pay the purchase price would remain. See also notes under Sec. 10

under the heading "Payment of cost to vendor."

Exposing or offering for sale. Food stored on a counter behind a screen so as to be invisible to a customer is not exposed for sale. But food exposed on a customer in a shop is still exposed for sale though contained in a wrapper.5 An offer to sell as by handbill is not an offering for sale.6 But loaves taken out on a baker's cart with the intention that they shall be sold are exposed for sale and probably offered for sale.7

A offer to sell, as by handbill, is not an offering for sale.8 On "offering" sce also Wiles v. Maddison.9 But loaves taken out on a baker's cart, with the intention that they shall be sold, are exposed for sale and probably also offered for sale,10 texposure for sale includes exposure for the purpose of completing an agreement to sell previously entered into), and Clark v. Strachan, 11

N. Cr. 731; see also Public Prosecutor v. Ramchan I - va. 1940 M. 1. 32

Pubile Prosecutor v. Narayana Ayyar, 1940

1. The Public Proceeder & Smallhi Singue nr. Abt. 1949 Med. (29). But we Ranju Prasad v. The State of Bihar, 1953 B. L. J. R. 589. J. P. 358.

Keating v. Hoarwood, (1926) 90 J. P. 83.

World's Tea Co. v. Gardner, (1895) 59

J. P. 358: 25 Digest 123, 445.

(1943) + All. E. R. 315: 107 J. P. 83:

2nd Digest Supp.

10. Keating v. Hoarwood, 96 J. P. 131; see also O'lett v. Jos In. (1916) 2 K. B. 41; 82 J. P. 221; 25 Dig. st 110, 336. 11. (1940) S. C. J. 29.

<sup>1.</sup> Public Prosecutor v. K. V. R. Annamalai Chetti r. 1954 M. d. 862; see also Petris Gunstan and Tee Ltd. v. Ward, (1902) K. B. 1: 71 L. J. K. B. 656. 1944 Mod. 236 1944 M. W.

Wheat v. Brown, (1892) 1 G. B. 418. World's Tea Co. v. Gardner, 1895 J. P. 358.

(sausages made to customer's order and lying in dish in shop prior to delivery were not "exposed for sale, or on sale.")

The transaction in a shop where a self-service system is in operation is in no way different from a sale in an ordinary shop. The mere fact that the customer may pick up goods marked with their price and exposed for sale on the shelves does not amount to an offer to sell by the shopkeeper, which the customer, by picking up an article, accepts, but it is the customer who, in picking up an article and taking it to the cashier, makes an offer to buy which is accepted by the acceptance of the purchase price by the cashier and it is at that moment that the contract of sale is completed.

# CENTRAL COMMITTEE FOR FOOD STANDARDS AND CENTRAL FOOD LABORATORY

- 3. (1) The Central Government shall, as soon as may be after the commencement of this Act, constitute a committee for food standards. Standards to advise the Central Government and the State Governments on matters arising out of the administration of this Act and to carry out the other functions assigned to it under this Act.
- (2) The Committee shall consist of the following members, namely,—

(a) the Director-General, Health Services, ex officio, who

shall be the Chairman:

(b) the Director of the Central Food Laboratory, ex officio;

(c) two experts nominated by the Central Government;
 (d) one representative each of the Central Ministries of Food and Agriculture, Commerce and Industry,
 Railways and Defence nominated by the Central

Government;

- (e) one representative each nominated by the Government of each [\* \* \*]2 State;
- (f) two representatives nominated by the Central Government to represent the [Union Territories]<sup>3</sup>;

(g) two representatives of Industry and Commerce nominated by the Central Government;

(h) one representative of the medical profession nominated by the Indian Council of Medical Research;

(3) The members of the Committee referred to in clauses (c), (d), (e), (f), (g) and (h) of sub-sec. (2) shall, unless their

(1915) 1 K. B. 526: 79 J. P. 219: 25 Digest 73, 26; Newman v. Left at, (1951) 1 K. B. 333: (1950) 2 All. E. R. 832: 114 J. P. 561: 2nd Digest Supp.

2. Words and letters "Part A State and Part B" omitted by Taxation of Laws (No. 1) Order 1956

(No. 1) Order, 1956.
3. Substituted for "Part C States" by ibid.

<sup>1.</sup> Pharmacentical Society of Great Britain v. Boots Cash Chemists (Southern), Ltd., (1952) 2 Q. B. 795: (1952) 2 All. E.R. 456: 2 T. L. R. 340, affirmed (1953) 1 Q. B. 401: (1953) 1 All. E. R. 482: 117 J. P. 132: 3rd Digest Supp. See also Newton-in-Makerfield Urban Council v. Lyon, (1900); 69 L. J. Q. B. 230: 26 Digest 348: 761; McNair v. Terroni,

seats become vacant earlier by resignation, death or otherwise, be entitled to hold office for three years and shall be eligible for renomination.

(4) The functions of the Committee may be exercised

notwithstanding any vacancy therein.

- (5) The Committee may appoint such and so many sub. committees as it deems fit and may appoint to them persons who are not members of the Committee to exercise such powers and perform such duties as may, subject to such conditions, if any, as the Committee may impose, be delegated to them by the Committee.
- (6) The Committee may, subject to the previous approval of the Central Government, make by-laws for the purpose of regulating it, own procedure and the transaction of its business.

## SYNOPSIS

Constitution of Central Committee for Food Standards.
 Effect of establishment of Central
 Function of the Central Committee.
 Standards of quality of various articles of food.

2. Effect of establishment of Central Committee for food Standards.

1. Constitution of Central Committee for Food Standards. The Government of India by notification No. S. R. O. 1236, F. 12-54/54-D.S., dated 1st June, 1955, has constituted the Central Committee for Food Standards, which consists of the following members, namely,—

(1) Director General, Health Services, Chairman, ex officio.

(2) Director, General Food Laboratory, ex officio.

Being experts nominated by the Central Government under clause
(c) of sub-sec. (2) of Sec. 3.

(3) Dr. K. Mitra, Assistant Director General of Health Services, New Delhi.

(4) Dr. V. Subramanyan, Director, Central Food Technological Research Institute, Mysore.

Being representatives of the Central Ministries of Food and Agriculture, Commerce and Industry, Railways and Defence, nominated by the Central Government under clause (d) of sub-sec. (2) of Sec. 3.

- (5) Dr. M. B. Ghatge, Agriculture Marketing Adviser, Ministry of Food and Agriculture, New Delhi.
- (6) Sri V. A. Mehta, Assistant Development Officer, Development 'Wing', Ministry of Commerce and Industry, New Delhi.

(7) Dr. L. N. Goel, Chief Medical Officer, Northern Railway, New Delhi.

- (8) Lt.-Col. A. G. Fernandes, A. M. C., Assistant Director of Supplies Q. M. G's. Branch, Army Headquarters, New Delhi.
  - Being representatives nominated by the Government of each Part B State under clause (c) of sub-sec. (2) of Sec. 3.
- (9) Sri S. Narayana Iyer, Government Analyst (Foods and Drugs), Madres.

(10) Dr. D. Subba Rao, Director of Health (Andhra), Kurnool.

(12) Sri Sachindra Nath Mitra, Public Health Analyst for Food and Water, West Bengal, Public Health Laboratories, Calcutta.

- (13) Sri S. Roy, Public Analyst, Government of Uttar Pradesh, Lucknow.
- (14) Dr. B. D. Kochhar, Public Analyst, Government of Punjab, Ambala Cantonment.
- (15) Dr. N. K. Roy, Director, Madhya Pradesh Health Institute, Nagpur.
- (16) Sri B. K. Datta Roy, Public Analyst to the Government of Assam, Shillong.
- (17) Sri Amarendranath Das, Public Analyst to the Government of Orissa, State Public Health Laboratory, Cuttack.
- (18) Dr. S. C. Roy, Chemical Analyst to the Government of Bihar, Patna.
- (19) Dr. Shankarlal Gargye, Director of Health Services, Madhya Bharat, Gwalior.
- (20) Sri K. V. Krishna Warier, Public Analyst, Government of Travancore-Cochin, Trivandrum.
- (21) Sri P. N. Bhargava, Chief Analyst, Rajasthan, Jaipur.
- (22) Sri S. D. Bhatia, Chemical Examiner, State Analytical Laboratory, Patiala.
- (23) Dr. S. Seshagiri Rau, Director of Public Health, Government of Mysore, Mysore.
- (24) Sri R. K. Trivedi, Director of Health Services, Saurashtra.
- (25) Dr. L. D. Khatri, Director, Medical and Public Health Services, Hyderabad State, Hyderabad.
  - Being representatives nominated by the Central Government to represent the Part C States, under clause (f) of sub-sec. (2) of Sec. 3.
- (26) Major M. S. Chadha, Director of Health Services, Delhi State, Delhi.
- (27) Dr. Tajwiz Singh, Assistant Director of Health Services, Himachal Pradesh, Simla.
  - Being representatives of Industry and Commerce nominated by the Central Government under clause (g) of sub-sec. (2) of Sec. 3.
- (28) Sri Gokulchand Hirachand, Walchhandnagar Industries Ltd., Construction House, Ballard Estate, Fort, Bombay.
- (29) Sri P. D. Bhargava, Midland Fruit and Vegetable Products, Masani Railway Station, Mathura, Uttar Pradesh.
  - Being the representative of the Medical Profession nominated by the Indian Council of Medical Research under clause (h) of subsec. 3.
- (30) Dr. G. Gopalan, Deputy Director, Nutrition Research Laboratories, Coonoor.
  - The Committee consists of 30 members which is to divide itself into various sub-committees in order to expedite their work.
- 2. Effect of establishment of Central Committee for Food Standards. See Notes under Sec. 4 under the heading "Effect of establishment of Central Food Loboratory."

- 3. Functions of the Central Committee. The functions of the Central Committee are advisory. The Central Government and the State Governments may refer to the Central Committee for advice such questions as they think fit, being questions relating to the administration of the Prevention of Food Adulteration Act. Other business of the Committee is to carry out functions assigned to it under the present Act.
- 4. Standards of quality of various articles of food. By notification No. 2106, dated 12th September, 1955, the Central Government after consultation with the Central Committee for Food Standards has framed Rule 5 and Appendix B, which lay down the standards of quality of the various articles of food. For purposes of ready reference Rule 5, Appendix B are reproduced below:
  - "Rule 5. Standards of the quality of various articles of food specified in Appendix B to these rules (The Prevention of Food Adulteration Rules, 1954) are as defined in that Apdendix.

# APPENDIX B (See Rule 5)

DEFINITIONS AND STANDARDS OF QUALITY A. 01. Beverags, Non-alcoholic

A. 01. 01. Aerated water, other than soda-water, means potable water sweetened with sugar, impregnated with carbon-dioxide or oxygen or with both under pressure, with or without admixture of salts of sodium, magnesium or calcium, singly or in combination, with or without citric acid and of the permitted flavouring and colouring substances, if any, and shall not contain tartaric acid or phosphoric acid or other mineral acid or any lead or other poisonous metal, or any other added substance.

Aerated water shall be deemed to be below the standard of purity if it is manufactured from water which is unfit for drinking purposes or if ice manu-

factured from such water is inserted in it.

- A. 01. 02. Soda-water shall be potable water, impregnated with carbon dioxide or oxygen or with both, under pressure with or without admixture of salts of sodium, magnesium calcium, singly or in combination, and shall not contain any lead or other poisonous metal or any other added substance. Soda-water shall be deemed to be below the standard of purity if it is manufactured from water which is unfit for drinking purposes or if ice manufactured from such water is inserted in it.
- A. 02. Baking powder means a combination capable, under conditions of baking, of yielding carbon-dioxide, and consists of sodium bicarbonate, and acid-reacting material, starch or other neutral material.

The acid-reacting material of baking powder shall be-

(a) tartaric acid or its salts, or both;
(b) acid salts of phosphoric acid;
(c) acid compounds of aluminium, or
(d) any combination of the foregoing.

When tested, baking powder shall yield not less than 10 per cent of its weight of carbon dioxide.

A. 03. Starchy foods

A 03. 01. Arrowroot means the seperated and purified starch from the rhizomes of the plant known as maranta arundinaca or from angulifolia.

A. 03 02. Tapioca globules known as Tapioca sago or Nahudana means the edible starchy product of the roots of the tapioca, Manihol willissima and shall be free from lime, tale or any other non-starchy foreign ingredients.

A. 04. Asafoetida or hing means the Oleo-gum-resin obtained from the rhizome and root of Ferula Alliacea. Ferula rub icaulis and other species of Ferula. It shall contain no sand, gravel or other foreign mineral matter, colophony resin, galbonum resin, ammoniaceum resin or any other foreign resin. The ash content shall not exceed 15 per cent of its weight; and the alcoholic extract (with 90 per cent alcohol) shall be not less than 25 per cent.

Compounded asafoctida or bantheni hing is composed of one or more varieties of as foetida (Irani and/or Pathani hing) gum arabic and wheat and/or rice flour. It shall not contain sand, gravel or other foreign mineral matter, colophony resin, galbonum resin, ammoniaceum re in or any other foreign resin. The ah content shall not exceed 10 per cent of its weight and the alcoholic extract (with 90 per cent alcohol) shall not be less than 10 per cent. Use of coaltar dyes or mineral pigment is prohibited.

- A. 05. 01. Turmeric (haldi) means the dried rhizome or bulbous root of plants of genus Curcuma and species longu and includes turmeric in whatsoever form. It shall be free from damage by insect pest, from lead chromate and other artificial colouring matter, and shall not contain more than 2.5 parts per million of lead. It shall conform to the following standards:
  - (a) Moisture shall not be more than 10 per cent.
  - (b) The characteristic boric acid test shall be positive.

(c) Total ash shall not be more than 7 per cent.

- (d) Ash insoluble in HCl shall not exceed 1.5 per cent.
- A. 05. 02. Cumin seed (Cuminum cyminum) shall not contain-
  - (a) more than 5 per cent of foreign seed; (b) more than 9.5 per cent of total ash; and
  - (c) more than 1.5 per cent of ash insoluble in HCl.
- A. 65. 63. Caraway Carum (Carvi) seeds shall not contain -
  - (a) more than 5 per cent of foreign seeds; (b) more than 8 per cent of total ash; and
  - (c) more than 1.5 per cent of ash insoluble in HCl.
- A. 05. 04. Cinnamon means the dried inner bark of Cinnamonum zey-lanicum powdered cinnamon shall not contain any cassia nor any other foreign vegetable substance. It shall contain not more than 8 per cent of total ash and not more than 2 per cent of ash insoluble in hydrochloric acid and shall contain not less than 0.5 per cent of volatile essential oil.
- A. 05, 05. Cloves means the dried flower-buds of Eugenia Caryophyllata. They shall not contain any exhausted or partly-exhausted cloves, nor any foreign vegetable or mineral substance nor more than 5 per cent by weight of clove stems. It shall contain not tess than 15 per cent of volatile ether extract, not more than 7 per cent of total ash and not more than 9.5 per cent of ash insoluble in HCl.
- A. 05. 06. Coriander is the dried fruit of the coriander plant, and shall not contain more than 7 per cent of total ash, and 1.5 per cent of ash insoluble in hybrochloric acid.
- A. 07. Bean means dry kindney-shaped or flattened seeds of the leguminous varieties used as food, either whole or prepared as dhall. It shall not contain hydrochloric acid exceeding 20 parts per million as determined by A. O. A. C. Maceretion method.

# A. 07. Sweetening Agents

A. 07. 01. Cane-sugar is the crystallized sugar obtained from sugarcane, beet root, etc., and includes the refined product obtained from gur.

It shall centain not more than 0.7 per cent of ash, not more than 1.5 per cent of water and not less than 96.5 per cent of sucrose.

A. 67. 02. Bura shall contain not less than 96.5 per cent of total sugar expressed as such se and should contain not more than half per cent of its weight as insoluble ash. It should be free from all poisonous matter. In the case of Khandsari the minimum sugar content in terms of sucrose should be not less than 90 per cent.

A. 07.03. Honey means the food derived entirely from the work of lees operating upon the nectar of flowers and other sweet exudation of plants. It shall not contain more than (a) 25 per cent of moisture, (b) 0.9 per cent of ash, and (c) 10 per cent of sucrose. The minimum reducing sugar con-

tent shall be 60 per cent. Fiehe's test should be negative.

A. 07. 04. Ice-candy means the frozen ice produce containing sugar, with or without the addition of the permitted colouring or flavouring substance.

## A. 08. 01. Coffee.

- A. 08. 01. (1) Coffee (green, raw or unroasted) means the seed of Coffea Arabica, Coffea Liberica or Coffea Robusta, freed from all but a small portion of its supermodern by decortication.
- (2) Roasted coffee means properly cleaned green coffee which has been roasted to a brown colour and has developed its characteristic aroma.
- (3) Ground coffee means the powdered product obtained from 'roasted coffee' only and shall be free from husk.
- (4) Coffee (green, raw or unroasted), roasted coffee, and ground coffee shall be free from any artificial colouring, flavouring, facing, extraneous matter of glazing substance and shall be in sound, dry and fresh condition free from rancid or obnoxious flavour.
- (5) Coffee (green, raw or unroasted), roasted coffee, and 'ground coffee' shall conform to the following analytical standards:
  - (i) Total ash (determined on the sample dried to constant weight at 100°C) shall be feathery white or bluish-white in colour and shall be not less than 3.5 per cent and not more than 5.0 per cent by weight of which not less than 65 per cent shall be soluable in boiling distilled water. The ash insoluble in hot dilute HCl shall be not more than 0.1 per cent.

(ii) The alkalinity of the ash per gram of dried coffee shall be equivalent to not less than 3.4 ml. and not more than 4.4 ml. of

N/10 acid.

(iii) The coffeine content, as obtained by standared methods, shall

be not less than 1.2 per cent.

(iv) The aqueous extract (determined by extraction of 2 grams of the sample dried to constant weight at 100° C with 100 ml. of boiling distilled water for one hour under reflux) shall be not less than 25 per cent and not more than 32 per cent.

A. 08.02 Chicory means the dried and roasted root of Chicorium intybus 1111111.

A. 98.03 Coffee-chicory mixture or coffee mixed with chicory or coffee and chicory shall be pure ground coffee mixed with roasted and ground chicory and shall be in sound, dry and dust-free condition with no rancid or obnoxious flavour.

Any tin or other receptacle containing a mixure of coffee and chicory shall not bear any misleading expression.

The expression "French Coffee" may be used if followed by the words "mixed with chicory" or "blended with chicory".

A. 09. Curry Powder: Curry powder shall contain not less than 85 per cent by weight of condiments and spices belonging to the group of aromatic herbs and seeds such as black-pepper, cinnamon, cloves, coriander, cardamum, chillies, cumin seeds, fenugreek, garlic, ginger, mustard, poppy seeds, turmeric, mace, nutmeg, curry leaves, white pepper, saffron and aniseeds, and shall contain not more than 15 per cent by weight of farinaceous matter and salt. If the manufacturer includes any spices, condiments, or any substance other than the aromatic herbs and seeds enumerated, the exact nature of such added ingredient or ingredients shall be specified on the wrapper or label prominently and such additions shall be made in lieu of, or partial replacement of, farinaceous material and or salt quota. The aromatic seed and herbs enumerated constitute the proper ingredients and not more than one or all of these may be used at the discretion of the manufacturer in the preparation of the curry powder.

#### A. 10. Edible Fat

- A. 10.01 Beef fat or suct means fat obtained from a beef carcass. It shall have a saponification value varying from 193 to 200 and an Iodine value from 35 to 46.
- A. 10.02. Mutton fat means fat obtained from the carcass of sheep. It shall have a saponification value varying from 192 to 195 and an Iodine value from 35 to 46.
- A. 10.03. Goat fat means the rendered fat from goat. It shall have a saponification value varying from 193 to 196 and Iodine value from 36 to 45.
- A. 10.04. Lard means the rendered fat from hogs and shall not contain more than one per cent of substances other than fatty acids and fat. It shall have a saponification value varying from 192 to 198 and an Iodine value from 52 to 65.

## A. 11. Milk and milk products

- A. 11.21. Milk means the normal clean and fresh secretion obtained by complete milking of the under of a healthy cow, buffalo, goat or sheep during the period following at least 72 hours after calving or until colostrum free whether such secretion has been processed or not.
- A. 11.01.01. Cow milk shall contain not less than 3.5 per cent of milk fat, except in Orissa, where it shall be not less than 3 per cent and in Punjab and Pepsu where it shall be not less than 4.0 per cent. The milk solids, other than milk fat, shall be not less than 8.5 per cent.
- A. 11.01.02. Buffalo milk shall contain not less than 5.0 per cent of milk fat except in Delhi, Punjab, Pepsu, Uttar Pradesh, Bihar, West Bengal, Assam, Bombay and Saurashtra where it shall be not less than 6 per cent. The milk solids other than milk fat shall be not less than 9 per cent.
- A. 11.01.03. Goat or sheep milk shall contain not less than 3.0 per cent of milk fat except in Midhya Pradesh, Punjab, Pepsu, Bombay, Uttar Pradesh Travancore-Cochin where it shall not be less than 3.5 per cent. The milk solids and other than milk fat shall be not less than 9 per cent.

Where milk, other than skimmed milk, is sold or offered for sale without any indication as to whether it is derived from cow, buffalo, goat, or sheep the standard prescribed for buffalo milk shall apply.

A. 11.02 Skimmed milk, either fresh or reconstituted, means milk from which all or most of the milk fat has been removed by mechanical or any

other process and includes "separated milk" or "machine skimmed milk". The milk solids other than milk fat shall be not less than 8.5 per cent.

A. 11:03. Butter milk means the product obtained after removal of butter from curds by churning or otherwise.

A. 11:04. Toned milk shall be prepared by toning milk with fresh separated milk or with separated milk reconstituted from spray dried skimmed milk powder.

It shall contain not less than 3.0 per cent of milk fat and 8.5 per cent

of milk solids other than milk fat.

- A. 11.05. Butter milk means the product prepared exclusively from the milk or cream of cow or buffalo, or both, with or without the addition of salt and annatto and shall contain not less than 80 per cent of milk fat and not more than 16 per cent of moisture. No preservative is permissible in butter.
- A. 11.06. Dahi or curd: (a) Whole milk dahi or curd means the product obtained from fresh whole milk either of cow or buffalo by souring. It shall not contain any ingredient not found in milk.
- (b) Skimmed milk dahi or curd means the product obtained from skimmed milk either of cow or buffalo by souring. It shall not contain any ingredient not found in milk.

The standard of purity of dahi or curd shall be the same as prescribed for the milk from which it is derived.

- A. 11.07. Condensed milk means milk which has been concentrated from full cream milk by removal of part of its water with or without the addition of sugar, and includes the article commonly known as evaporated milk, but does not include the article commonly known as dried milk, or powdered milk. It shall be free from preservatives other than sugar and contain at least 31 per cent of milk solids of which at least 9 per cent shall be fat.
- A. 11.03. Condensed skimmed milk means skimmed milk which has been concentrated by removal of part of its water with or without the sugar. The total milk solids including milk fat shall not be below 27.0 per cent in the sweetened variety and 20 per cent in the unsweetened variety.
- A. 11.09. Chhanna means the product obtained by precipitating the curd from boiling whole milk of cow and buffalo by the addition of lactic or citric acids or any other suitable coagulating agent.

Chhama prepared from cow milk or buffalo milk shall contain a minimum of 15 per cent of milk fat.

- A. 11.10. Cream means that portion of milk rich in milk fat which has risen to the surface of milk on standing and has been removed or which has been separated from milk by centrifugal force. It shall contain not less than 23 per cent of milk fat and shall not contain any added substance. The fat separated from cream shall conform to the specification prescribed for gher.
- A. 11:10:01. Dry whole milk (milk powder, powdered milk, powdered whole milk,) shall contain not less than 9:5 per sent of milk solids and 26 per cent of milk fat.
- A. 11·10·02. Dry skim milk, skim milk powder (powdered skim milk) shall contain not less than 95 per cent of milk solids.
- A. 11-11. Ice-cream means the frozen food made with cream, milk or other milk products, sweetened with sugar or honey and with or without (a)

eggs, (b) fruits, (c) nuts, (d) chocolates, (e) stabiliser not more than 0.5 per cent of the finished product, and (f) permissible flavour or colour. It shall contain not less than 36 per cent by weight of solids and 10 per cent by weight of milk fat except that when the ice-cream contains fruits or nuts or both, the content of milk fat may be proportionately reduced but not less than 8.0 per cent by weight. It shall not contain any starch, artificial sweetening agent or any other extraneous matter. Ice-cream prepared from skimmed milk shall not contain less than 8.5 per cent of milk solids other than milk fat.

A. 11:12. Mixed ice-cream means the same as ice-cream in composition except that it may contain starch or any other innocuous filler. The fat content and total solids content should be the same as prescribed for ice-cream.

- A. 11:13. Khoa means the product derived from milk of cow or buflalo by partial desiccation of water therefrom by the process of heating and it shall not contain any ingredient not found in milk. The moisture content of khoa shall not exceed 10 per cent and the fat content shall not be less than 20 per cent.
- A. 12. Margarine means any article of food which resembles butter in consistency, appearance and moisture content. It shall contain at least 80 per cent of vegetable oils or of a mixture of vegetable oils with hydrogenated vegetable oils and not more than 16 per cent moisture. It shall contain not less than 5 per cent of its weight of til oil but sufficient to respond to Badouin Test, the red colour produced being not lighter than 2.0 Red Unit in a 1 cm. cell on a Lovibond Scale.
- A. 13. Saffron means dried stigmata and tops of styles of Crocus saticus. and (a) it must not contain any foreign colouring matter or any other foreign matter, organic or inorganic, (b) it must not lose more than 12 per cent of its weight when dried at 100° C. (212° F) to constant weight, and (c) it must contain not less than 5 per cent of petroleum ether extract.
- A. 14. Tea means tea derived exclusively from the leaves and buds of plants of the Camellia Genus and the species. It shall conform to the following specifications:
  - (a) Total ash determined on tea dried to a constant weight at 100° C.
  - (b) Total ash soluble in boiling distilled water.
  - (c) Ash insoluble in HCl.
  - (d) Extract obtained by boiling dry tea (dried at constant weight at 100°C.) with 100 parts of distilled water for one hour under reflux.
  - (e) Alkalinity of soluble ash.

5.0 to 8.0 per cent.

Not less than 40.0 per cent of total ash.

Not more than 1.0 per cent.

Not lesss than 55 per cent. Not less than 1.3 per cent and

not more than 2 per cent expressed as K 27 O.

Not more than 15 per cent.

(f) Crude fibre

A. 15. Edible common salt means a crystalline solid, white or pale pink or light grey in colour, free from visible contamination with clay, grit and other extraneous adulterants and impurities. It shall not contain moisture in excess of 6 per cent of the weight of the undried sample. It shall contain on dry weight basis (a) at least 96.0 per cent by weight of sollium chloride (NaCl). (b) not more than 1.0 per cent by weight of matter insoluble in water, and

(c) not more than 3.0 per cent by weight of matter soluble in water other than sodium chloride."

4. (1) The Central Government may, by notification in the official Gazette,—

Central Food Laboratory.

(a) establish a Central Food Laboratory; or

(b) specify any laboratory or institute as a Central Food Laboratory;

to carry out the functions entrusted to the Central Food Laboratory by this Act or any rules made under this Act.

(2) The Central Gonernment may, after consultation with

the Committee, make rules prescribing-

(a) the function of the Central Food Laboratory;

(b) the procedure for the submission to the said Laboratory of samples of articles of food for analysis or tests, the forms of the Laboratory's reports thereon and the fees payable in respect of such reports;

(c) such other matters as may be necessary or expedient to enable the said Laboratory to carry out its func-

tions.

#### SYNOPSIS

- 1: Establishment of Central Food Laboratory.

  3. Functions of Central Food Laboratory.

  4. Analysis of food samples.
- 2. Effect of establishment of Central 5. Certificate for test or analysis by Food Laboratory.

  Central Food Laboratory.

1. Establishment of Central Food Laboratory. This Section provides for the establishment of a Central Food Laboratory to carry out the function as may be entrusted to it by this Act or any rules framed under this Act. The establishment of such laboratory in the Union of India is not mandatory while the establishment of Central Committee of Food Standards under the provisions is mandatory.

The Central Government by notification No. S.R.O. 1234-P.F.A. 1 Sec. 4 F 11-4/55-D (1), dated 1st June, 1955, have established the Central Food Laboratory in the premises of All-India Institute of Hygiene and Public

Health, Chittaranjan Avenue, Calcutta-12.

2. Effect of establishment of Central Food Laboratory. The establishment of a Central Committee for Food Standards and the Central Food Laboratory is something which should help in promoting better health of our people. If what is sold for being consumed as foodstuffs is of pure quality and conforms to proper standards, is rich in vitamin and other food qualities than the health of the nation would be greatly improved. Institutions of this kind exist in other countries and it is a welcome sign that the idea has been accepted by our Government and embodied in this Act.<sup>1</sup>

By establishment of a Central Food Laboratory and a Central Food Standard Committee the Central Government will be able to do something which will help in their drive towards raising the level of nutrition and thus carry into effect much of what is envisaged under Art. 47 of the Constitution.<sup>2</sup>

See Parliamentary Debates, Rajya Sabha, Vol. VII, No. 5, dated 1st September, 1954, p. 1088.
 See Parliamentary Debates, Rajya Sabha, Vol. VII, No. 16, dated 14th September, 1954, p. 2139.

3. Function of Central Food Laboratory. Rule 3 of the Food Adulteration Rules, 1955, prescribes the functions of the Central Food Laboratory as under:

"In addition to the functions entrusted to the Laboratory by the Act, the Laboratory shall carry out the following functions, namely,—

(a) analysis of samples of food sent by any officer or authority authorized by the Central Government for the purpose and submission of the certificate of analysis to the authorities concerned;

(b) investigations for the purpose of fixation of standards of any article of food:

- (c) investigations in collaboration with the laboratories of Public Analysts in the various States for the purpose of standardizing methods of analysis"
- 4. Analysis of food samples. (1) Samples of food for analysis whether under sub-section (2) of Sec. 13 of the Act or under clause (a) of Rule 3 shall be sent either through a messenger or by registered post in a seeled packet, enclosed, together with a memorandum in Form I in an outer cover addressed to the Director.

(2) The container as well as the outer covering of the packet shall be marked with a distinguishing number.

(3) A copy of the memorandum and a specimen impression of the seal used to seal the container and the cover shall be sent separately by registered

post to the Director.

(4) On receipt of the packet, it shall be opened either by the Director or by an officer authorized in writing in that behalf by the Director, who shall record the condition of the seal on the container.

(5) After the test or analysis, the certificate thereof shall be supplied

forthwith to the sender in Form II.

- (6) The fees payable in respect of such certificate shall be Rs. 40 per sample of food analysed.
- (7) Certificates issued under these rules by the Laboratory shall be signed by the Director. 1
- 5. Certificate for test or analysis by Central Food Laboratory. The form of certificate to be used by the Central Food Laboratory has been prescribed by the Prevention of Food Adulteration Rules, 1955, as follows:

#### FORM II

# [ See Rule 4(5) ]

Certificate of test or analysis by the Central Food Laboratory

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<sup>1.</sup> Rule 4 of the Prevention of Food Adulteration Act, 1954.

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General provisions as to Food Prohibition of import of certain articles of food.

- 5. No person shall import into India—
  - (i) any adulterated food;
  - (ii) any misbranded food;
  - (iii) any article of food for the import of which a licence is prescribed, except in accordance with the conditions of the licence; and
  - (iv) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

#### SYNOPSIS

1. Scope.

2. Rules relating to licence.

4. Contravention of provisions of the section.

Conditions.

1. Scope. This section makes unlawful the importation into India of-

(a) any adulterated food;(b) any misbranded food;

- (c) any article of food in breach of the conditions of the licence if a licence is prescribed for the import of that article of food;
- (d) any article of food in contravention of any orher provision of the present Act, or any other rule made under this Act.

Safeguard which the Act lays down should be complied with.1

- 2. Rules relating to licence. Rules 50 and 51 of the Prevention of Food Adulteration Rules, 1955, which prescribe conditions and duration of licence are produced below:
- "50. Condition for licence. (1) No person shall manufacture, sell, stock, distribute or exhibit for sale any of the following articles of food except under a licence:

(a) milk or skimmed milk or separated milk;

(b) milk products, including khoa, cream, rabri, dahi, etc.;

(c) ghee;

(d) butter;(e) charbi;

(f) edible oils;

(g) \* \* \*

(h) sweetmeats and savoury;

(i) aerated water;

<sup>4.</sup> Sanval Ram Agarwala v. Emperor, 1934

(j) articles made out of flour in cluding biscuits and other bakery

products; or

- (k) any other article of food (except fruit products covered under the Fruit Products Order, 1955 and vegetable oil products of Vanaspati, manufactured, stocked, sold or distributed by factories licensed for the purpose) which the State Government may by notification specify.
- (2) The State Government or the local authority shall appoint licensing authorities.
- (3) A licensing authority may with the approval of the State Government or the local authority by an order in writing delegate the power to sign licences and such other powers as may be specified in the order to any other person under his control.
- (4) If articles of food are manufactured, stored or exhibited for sale at more than one place, separate application shall be made, and a separate licence shall be issued, in respect of each such place:

Provided that this shall not apply to itinerant vendors who have no specified place of business and who will be licensed to conduct business in a particular area within the jurisdiction of the licensing authority.

- (5) Before granting a ficence for manufacture, stock or exhibition of any of the articles of food in respect of which a licence is required, the licensing authority shall inspect the premises and satisfy itself that it is free from sanitary defects. The applicant for the licence shall have to make such alteration in the premises as may be required by the licensing authority for the grant of a licence.
  - (6) \* \* \*
- (7) Proprietors of hotels and restaurants who sell or expose for sale savouries, sweets or other articles of food shall put up a notice-board containing separate lists of the articles which have been cooked in *ghee*, edible oil, hydrogenated vegetable oils and other facts for the information of the intending purchasers.
- (8) Oils which are declared as not intended for human consumption or have been denatured, shall not be manufactured, stored or sold in the same premises where edible oils are manufactured, stored or sold.

(9) No licensee shall employ in his work any person who is suffering from

infectious, contagious or loathsome disease.

(10) No person shall manufacture, store or expose for sale or permit the sale of any article of food in any premises not effectively separated to the satisfaction of the licensing authority from any privy, urinal, sullage, drain or place or storage of foul and waste matter.

(11) All vessels used for the storage or manufacture of the articles

intended for sale shall have proper covers to avoid contamination.

(12) Every manufacturer (including ghani operator) or wholesale dealer in butter, ghee, hydrogenated vegetable oil, edible oils, and other fats shall maintain a register showing the quantity manufactured, received or sold and destination of each consignment of the substances sent out from his manufactory or place of business, and shall present such register for inspection whenever required to do so by the licensing authority.

(13) An itinerant vendor granted a licence under these rules shall carry a metallic badge showing clearly the licence number and the nature of the

article for the sale of which the licence has been granted.

(14) The nature or articles of food for the sale of which a licence is required under these rules shall be mentioned in the application for licence.

Any objectionable, ambiguous or misleading trade name shail not be approved by the licensing authority.

(15) Every licensee who sells any food shall display a notice-loard containing the nature of the articles which he is exposing or offering for

sale.

51. Duration of licences. A licence shall, unless sconer suspended or cancelled, will be in force for such period as the State Government may prescribe:

Provided that if application for a fresh licence is made before the expiry of the period of validity of the licence, the licence shall continue to be

in force until orders are passed on the application."

3. Conditions. The word 'condition' is very wide. It embraces a multitude of things and may range over such matters as storing, packing, temperature, standard of purity, physical condition and chemical condition.<sup>1</sup>

4. Contravention of provisions of the section. If a person whether by himself or by any other person on his behalf contravenes the provisions of this section he is punishable under clause (a) of sub-sec. (1) of Sec. 16 of the present Act,

It is only the licence-holder who can be penalised if he commits a breach of a rule relating to the licence. Any other person whatever his relations to the licence-holder may be cannot be rightfully charged with an offence for committing breach.<sup>2</sup>

Application of law relating to Sea Customs and to goods, the import of which is prohibited by Sec. 18 of the Sea Customs Act, 1878 (VIII of 1878) shall, subject to the provisions of Sec. 16 of this Act, apply in respect of articles of food, the import of which is

prohibited under Sec. 5 of this Act, and officers of Customs and officers empowered under that Act to perform the duties imposed thereby on a Customs Collector and other officers of Costoms shall have the same powers in respect of such articles of food as they have for the time being in respect of such goods as aforesaid.

(2) Without prejudice to the provisions of sub-sec. (1) the Customs Collector, or any officer of the Government authorized by the Central Government in this behalf, may detain any imported package which he suspects to contain any article of food the import of which is prohibited under Sec. 5 of this Act and shall fothwith report such detention to the Director of the Central Food Laboratory and, if required by him, forward the package or send samples of any suspected articles of food found therein to the said laboratory.

SYNOPSIS

1. Scope.

2: Detention and confiscation of suspected goods.

 Nowranga Lal v. Chairman Midnapore Municipality, 1940 Cal. 324: (1940) 2 Cal. 82: 190 I. P. G. 186: 44 C. W. N. 615:

<sup>41</sup> Cr. L. J. 849. 2. Murari Lal v. King Emperor, 1939 A. L. J. 1037:1940 All. 3: 1939 A. W.R. 791.

- 1. Scope. Section 18 of the Sea Customs Act (VIII of 1878) prohibits the importation into India of certain goods. Officers of Customs and other officers are empowered under that Act to search for prohibited goods and detain any imported package which is suspected to contain goods the importation of which is prohibited. Similar powers are conferred by this section upon Collectors of Customs and other officers in respect of articles of food import of which is prohibited under Sec. 5 of the Act. This section further empowers them to forthwith report such detention to the Director of the Central Food Laboratory and if required by him forward the said package or send samples of any suspected articles of food found therein to the said laboratory.
- 2. Detention and confiscation of suspected goods. Section 19A of the Sea Customs Act relating to detention and confiscation of goods whose importation is prohibited runs as under—
- "19-A. (1) Before detaining any goods as may be specified in or under Sec. 18 or 19, as the case may be, or taking any further proceedings with a view to the confiscation thereof under the Act, the Chief Customs Officer or other officer appointed by the Chief Customs Authority in this behalf may require the regulations under this section whether as to information, security, conditions or other matters to be complied with, and may satisfy himself in accordance with these regulations that the goods such as are prohibited to be imported.
- (2) The Central Government may make regulations either general or special, respecting the detention and confiscation of goods the importation of which is prohibited, and the conditions if any, to be fulfilled before such detention and confiscation and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section and mode of verification of such evidence.
- (3) Where there is on any goods a name which is identical with or a colourable imitation of, the name of a place in the United King lom, India or Burma, the name unless accompanied equally large and conspicuous letters and in the English language, by the name of the country in which such place is situate, shall be treated for the purpose of Secs. 18 and 19 as if it were the name and place, in the United Kingdom, India and Burma.
- 4) Such regulations may apply to all goods the importation of which is prohibited by Sec. 18 or under Sec. 19, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.
- (5) The regulations may provide for the informant reimbursing any public officer and the Central Government all expenses and damages incurred in respect of any detention made on his information and of any proceedings consequent on such detention.
- (6) All regulations under this section shall be published in the Gazette of India and with the consent of the State Government concerned in the official Gazette of each State."
- 7. No person shall himself or by any person on his Prohibition of behalf manufacture for sale, or store, or distribute—
  articles of food.
  - (i) any adulterated food;
  - (ii) any misbranded food;

- (iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;
- (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority with a view to preventing the outbreak or spread of infectious diseases; or
- (v) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

#### SYNOPSIS

- 1. Scope. 12. Liability of brother of owner. Mens rea. 13. Liability of commission agent. 3. Person. 14. Adulteration of vegetable ghee. 4. Liability of corporations. 15. Possession. 5. By any person on his behalf. 16. Store. Liability of master for act of servant 17. Adulterated article in transit. or agent. 18. Storing for sale. 7. 19. Act of servant unauthorised--Manufacturing and offering for sale Contrary to express instructions. sweetmeats as containing pure ghee No authority to sell—Authority merely which contained impure ghee. to deliver. 20. Sell. 9. Limited authority to sell. 21. Adulterated food. 10. Liability of servant. 22. Burden of proof. Liability of manager.
- 1. Scope. This section is practically indentical with Sec. 5 with the only difference that this section prohibits the manufacture for sale, storage, sale and distribution of the articles food, the import of which into India is prohibited under Sec. 5.

This section also prohibits the manufacture for sale, storage, sale and distribution of any article of food the sale of which is prohibited during the prevalence of any infectious diseases with a view to prevent the outbreak and spread of such diseases.

Offences under this section are absolute offences requiring no mens rea other than the intent that the food shall be sold for human cousumption.<sup>1</sup>

This section means that even though an emyloyer may sell adulterated food by another person, still the master is liable. But the fact of selling by the person still remains. When the seller actually is the servant he cannot escape prosecution. Where it is proved that a person was selling only on behalf of the master, both the seller, the servant as well as the person on whose behalf the food was sold, viz. the master are liable.<sup>2</sup>

The contravention of the prohibition contained in this section is punishable under clause (a) of sub-sec. 1 of Sec. 16.

- 2. Mens rea. See notes under Sec. 16 under the heading "Mens rea not essential element."
- 3. Person. The word 'person' is not defined in this Act, but it may be taken that the definition of the word 'person' is as in the General

<sup>1.</sup> Cf. Quality Dairies (York) Ltd. v. Pedley (1952) 1 K. B. 275: (1952) 1 All. E. R. 380: Gardaer v. Akarayd, (1952) 2 Q. B. 743: (1952) 2 All E. R. 306; Spiers and

Parks v. Bennett, (1893) 2 Q. B. 65. Public Prosecutor v. Lourduswamy, 1957 Mad. 631.

Clauses Act, 1887, viz. as one that includes any company or association or body of individuals whether corporate or not. Thus a Co-operative Milk Society has as a body corporate a separate existence apart from its individual members. It may transfer milk to one of its members for consideration.2 So under this section if any private individual commits an offence he can be punished and if any company commits an offence it can be punished.

If the business of a company is being managed by a receiver, proceed-

ings should be taken against him.3

- 4. Liability of corporations. A joint stock company incorporated under the Companies Act can be convicted of an offence under the Act.4 A shop assistant sold to and to the prejudice of a purchaser an article of food which was not of the nature, substance and quality of the article demanded. The occupier of the shop, and the proprietor of the business carried on there was a limited company trading in registered name. The general manager who was director and also the secretary, resided on the premises and occasionally conducted the business of the shop in person. In his absence his wife took charge, and assisted the shop assistant. The business was carried on under the exclusive and unrestricted control of the general manager who was practically the only shareholder in the company. He was not in the shop at the time of the sale in question. The general manager having teen convicted of an offence under 1375 English Act, Sec. 6. Held, the facts showed the shop assistant to be the servant of the company, and not of the general manager, and the conviction was wrong.<sup>5</sup> If a salesman of a registered co-operative milk society transfers adulterated milk to one of its individual members for a consideration—the offence is committed.6
- 5. By any person on his behalf. A person who is working in a shop on behalf of the owner as his employee is certainly one who will come wit in the meaning of the "person offering for sale the articles exhibited of there."?
- 6. Liability of master for act of servant or agent. It is quite true that as a general rule of criminal law the master is not responsible for the unauthorised acts of his servants. But in many cases the law imposes upon the owner of the property the obligation of managing it, so that it shall not injuriously affect any one else or the public, or requires or forbids the dealing with it in some particular way. In such case, where the breach of obligation is punishable criminally, the owner cannot free himself from liability by delegating the management to someone else on his behalf. This liability of the master is insisted upon because otherwise every master will be able to set at nought the entire series of special acts by employing servants ad hoc and getting illegal acts done and at the same time dis wn his liability therefor and would take care always to be out of the way.8

<sup>1.</sup> Sec. 3. (39), General Clauses Act.

Public Prosecutor v. Ramachandrayya, 1948
 Mad. 329: 49 Cr. L. J. 395: (1948) 1
 M. L. J. 117: 1948 M. W. N. 159.
 Migh v. Wickenden, (1942) 2 K. B.
 160: (1942) 2 All E. R. 68.

<sup>4.</sup> Pearks, Gunston & Tee, Ltd v. Ward; Hennen v. Southern Counties Dairies Co., (1902) 2 K. B. 1: 71 L. J. K. B. 556: 87 L. T. 51: 66 J. P. 774: 18 T.L. R. 538: 20 Cox C. C. 279 D. C. Broth v. Helliwell, (1914) 3 K. B. 252: 83 L. J. K. B. 1548: 111 L. T. 542: 78 J. P. 223: 30 T. L. R. 529: 12 L. G. R. 940: 24 Cox C. C. 361 D. C.

Public Prosecutor v. Ramachandrayya, 1948 Mad. 329.

<sup>7.</sup> Public Prosecutor v. Pattu Narasimhalu,

<sup>1953</sup> Mad. 697; Sherros v. De Rutzen, (1895) 1 Q. B 918; Hariprasada Rao v. The State, 1951 S. C. 204; Kasi Rajah v. State, 1953 Mad. 186; R. v. Dake of Linster, (1924) 1 K. B. 311; Cf. 18 Cox 2; R. v. Bishop, (1879) 52 Q.B.C. 259; Hobbs v. Corporation of Winchester, 259; Hobbs v. Corporation of Winchester, (1910) 2 K. B. 471; Betts v. Arunstead, (1888) 20 Q. B. D. 771: Goulder v. Rook. (1901) 2 K. B. 290; Laird v. Debell, (1906) 1 K. B. 131; Gundy v. Lecoq, (1884) 13 Q. B. D. 207.

8. R. v. Stephens, (1866) 1 Q. B. 702; Redgate v. Haynes, (1876) 1 Q. B. 89, Bond v. Evans, (1890) 21 Q. B. D. 249; Allen v. Whitehead, (1930) 1 K. B. 211; Grifiths v. Studebaker Ltd., (1924) 1 K.B. 102.

It is now, however, settled that the true test is to look at the object of each Act that is under consideration to see how far knowledge is of the essence of the offence created. In arriving at this decision, it has been held material to enquire:

(1) Whether the object of the statute would be frustrated, if proof

of such knowledge was necessary;

(2) Whether there is anything in the wording of the particular

section which implies knowledge;

(3) Whether there is anything in other sections showing that knowledge is an element in the offence, which is omitted or referred to in the section under discussion. These tests have been applied in cases arising under the Licence Laws and other special enactments.1

The place of mens rea in special Acts has been discused at considerable length in Supreme Court decision in Hariparasada Rao v. The State,2 There the English decisions were examined and have been cited with approval. It is pointed out that in Mous Il Brothers Ltd. v. London and North-Western Railway, Viscount Reading, C. J., dealing with a case under the Railways

Clause Consolidation Act, 1845, observed as follows:

"Prima facie then, a master is not to be made criminally responsible for the acts of his servant to which the master is not a party. But it may be the intention of the Legislature, in order to guard against happening of the forbidden thing, to impo e a liability upon a principal even though he does not know of, and is not party to the forbidden act done by is servant. Many statutes are passed with this object. Acts done by the servant of the licensed holder of licensed premises render the licensed holder in some instances liable, even though the act was done by his servant without the knowledge of the master. Under the Food and Drugs Act there are again instances well known in these courts where the master is made responsible, even though he knows nothing of the act done by his servant and he may be fined or rendered amenable to the penalty enjoined by the law. In those cases the Legislature absolutely forbids the act and makes the principal liable without a mens rea."

In the same case, Atkin, J., expressed the same view in these words:

"I think that the authorities cited by my Lord make it plain that while prima facie a principal is not to be made criminally responsible for the acts of his servants, yet the Legislature may prohibit an act or enforce a duty in such words as to make the prohibition or the duty absolute; in which case the principal is liable if the act is in fact done by his servants. To ascertain whether a particular Act of Parlaiment has that effect or not regard must be had to the object of the statute, the words used, the nature of the duty laid down, the person upon whom it is imposed, the person by whom it would in ordinary circumstances be performed, and the person upon whom the penalty is imposed. If authority for this is necessary, it will be found in the judgment of Bowen, L. J. in Reg v. Tyler,4 and in Honghton v. Mudy.3

Respondent, a grocer, while his assistant was out of the shop, had made up for his own use a half-pound packet consisting of a mixture of

<sup>1.</sup> In re Kasi Riji, Proprietor, Thiruceswirar

Rice Mills, Ariyur, 1953 Mad. 156. 2. (1951) Mad. W. N. Gr. 102 (S. C.) 3. (1917) 2 K. B. 836 at p. 844,

<sup>4. (1891) 2</sup> Q. B. 588 at p. 592. 5. (1910) 193 L. T. 60: 74 J. P. 377; 8 L. Cr, R, 838 D. C,

butter and margarine. This packet was inadvertently left upon the counter while respondent went to attend to a customer in another part of the shop, but it was not placed there for the purpose of sale. Respondent's assistant then came in and immediately afterwards a minimum in and asked for half a pound of salt butter and was served by the assistant with the same half-pound of mixed butter and margarine. The assistant seeing the half-pound packet lying on the counter reads-made, thought that it was there for the purpose of sale but in selling it he was acting without the authority and contrary to express instructions of the respondent he was to sell better always from the bulk and not in ready-made packets. Upon an information against respondent under 1875 English Act, S.c. 6, for selling an article which was not of the nature and quality of the article demanded. Held, respondent was liable for the act of his servant even though such act was unauthorised by him and was done contrary to his express instruction, and he ought to have been convicted.

In Brown v. Foot, P. a servant of the appellant, was employed to sell milk out of the cans by retail. The caus were received by the appellant, the master, on arrival from the county, and the sample taken from each can before it was sent out for sale. Appellant had published a warning to his servants that any servant whose can of milk did not correspond with the sample taken from it would be liable to instant dismisal. P's can was duly sampled and the sample proved to be unadulterated. Subsequently to his taking out the can for the sale of milk P admitted watering the milk, some of which milk he so'd to an Inspector who thereupon summoned appellant, the mister under 1875 troglish Act, Sec. 6. Appellant was convicted by a Magistrate and fired the full penalty. Held: (1) Appellant was rightly convicted on the ground that he was the seller within the meaning of the Act and was liable for his servant's action in selling adulterated milk, (2) the fact of the sale of adulterated milk was sufficient proof of the offence without evidence of any connivence by appellant though evidence rebutting connivence might properly be admitted by the Magistrate with a view to mitigate any penalty he might otherwise have thought fit to impose.

In the course of his judgment Hawkins, J., said-

"I think myself that the master for all purposes must be deemed to be the seller of the milk: that is to say, it is impossible to say that he is not a seller of the milk. It may be said that the person who acutally deals with the milk, and sells it, and delivers it for the master, may also within the provisions of this Act of Parliament be the seller of the milk, but at the same time, even if he is so, as I think he is, I think that the master himself is also the seller of the milk."

The learned Judge pointed out that the word "knowingly" had been excluded by the Legislature from Sec. 6 of the English Sale of Food and Drugs Act, 1875 and it may be presumed that such exclusion was deliberate for otherwise the master could protect himself by saying.

"Although R is perfectly true my servant sold adulterated milk, and I received the proceeds of the milk which he sold, yet I am not to be rendered responsible because you failed to prove I had any cognisance, or that I was conniving at the wrongful act of my servant." Wills, J., in the same case put the matter in more general terms when he said in his report:

<sup>1. (1892) 61</sup> L. J. M. C. 110: 66 L. T. 649: 56 J. P. 581: 8 T. L. R. 268: 17 Cox.

"Section 6 upon which this question ari es imposes a positive prohibition against sale of adulterated articles. That implies, to my mind. not only that every person should take care not to do the physical act of selling but that he should take care that a sale is not effected by person whom he employs, for the purpose of telling substances that contravene the provisions of the Act of Parliament. That this servant, in the present case, was employed in the general business of selling milk for his master, there cannot be any doubt. If so, I do not see any reason to excuse the master for having broken the Act of Parliament by effecting, through that unfaithful servant, it may be, a sale which was contrary to the Act of Parliament because he does not sell it himself. He is bound not only to sell himself, but to take care that other people do not sell it for him in such a condition as to come within Sec. 6. If he does not take that care, he breaks the Act of Parliament."

This decision was followed in Parker v. Alder: an even stronger case in which the adulteration was not by an employee of the respondent but by the servants of a railway company. In the course of his judgment, in that case Lord Russell, L. C. J., pointed out if the respondent were to be relieved from responsibility a wide door would be opened for evading the beneficial provisions of this legislation2 has been applied in India by the Calcutta High Court in Sew Karan v. Corporation of Callcutta3 in a case under Sec. 495, Calcutta Municipal Act, a section in almost the same terms as Sec. 6 of the English Act, from which it was derived.

Consequently the person on whose behalf the sale is made and the person who takes the article in his hand and preforms the physical act of transferring the adulterated thing to the purchaser are both persons who sell within the meaning of the Act.<sup>4</sup>

A proprietor of a shop is responsible for the sale at his shop of adulterated foodstuff although such proprietor alleges to be only a sleeping partner.

He would be liable, for it is not only the actual salesman who is responsible and who can be convicted under the Act for sale of adulterated food.5

In Ramchand Ram v. Gaya Municipality,6 it was however held that where a servant of a firm consisting of four partners sold ghee that was not genuine, a partner who does not sit on the shop and actually carry on the business is not liable to criminal prosecution.

In Lakhmichand Ramchand v. Chottoram Motiram,7 it was held that the principal was liable for the act of his agent. Similarly, in Emperor v. Babulal,8 it was held that where the servant of a licensed vendor of opium in the course o. his employment as such servant sold opium to person under the age of 14 years the licensed vendor was also liable under Sec. 9, Opium Act, even though he might not have been aware of the sale.

3. 39 Cal. 682.

7. 24 Bom. 403. 8. 1934 All. 319: 14 I. C. 666.

 <sup>1. 1899 1</sup> Q. B. 20: 68 L. J. Q.B. 7: 79 L. T. 381: 47 W. R. 142.
 2. Bryen v. Foot, (1892) 17 Cox C. C. 509.

<sup>3, 39</sup> Cal. 082. 4. Brif Mehendrey, Emperor, 1948 All. 177: 1947 A. W. R., H. C., 398: 1948 A.L.J. 1: (1947) All. 134: 49 Cr. L. J. 175; 11 China, Hindam h. 1891, 2 Q. B. 181: 00 L. J. M. C. 140: 05 L. T. 149: 55 J. P. 775: 39 W. R. 607: 7 T. L. R. 513 D. C.

<sup>5.</sup> Govindram Jamiatrai v. Kara hi Municipal Gordiaran Jamadrai V. Kara, ht. Michigal Corporation, 1938 Sind 218: (1939) Kar. 191: 40 M. L. J. 7; Brown v. Foot, (1892) 66 L. T. 649: 61 L. J. M. C. 110: Parker v. Alder, (1899) 1 Q. B. 20: 79 L. T. 381: 19 Cox C. C. 191. 6. 1945 Pat. 264: 26 P. L. T. 17: 220 I C. 95: 46 Cr. L. J. 655.

The agent or servant is within the prohibition of the words "no person shall sell." Hence the servant or agent who sells adulterated articles is liable and not only the maste, or owner of the adulterated articles.1

7. Act of servant unauthorised Contrary to expressing tructions. Acts done by the agent render the principal liable even though the act was done by the servant without the knowledge of the master. This is not so when the servant acts outside the scope of his employment.2 If the master is able to show that he had used due diligence to enforce the execution of the Act and what was done was without his knowledge, consent or connivance the emp'oyer has got to be acquitted.

In Public Prosecutor v. K.V. R. Annamilai,3 the proprietor purch seed butter with a letter of warranty according to which it was to be washed, cleaned and drained of water on return of seller. The butter was till then to be kept in the proprietor's shop and not be sold. The employee in the shop sold half a pound of butter to he Sanitary Inspector for purpose of analysis at the time when proprietor was not present. The butter was found to be adulterated with 8.1 per cent of excess water.

A servant of the appellant sold lard adulterated with foreign matter without a proper label indicating its character. On the bearing of a summous against appellants under 1875 English Act, Sec. 6, it was proposed on behalf of appellants to call evidence to show that the action of the servent was contrary to their express instructions. The Justices refused to admit the evidence. Held, 1875 Act does not make master responsible for the unauthorised acts of his servant and the evidence should have been admitted.1

- 8. No authority to sell-Authority merely to deliver. Respondent sent his daughter with milk to be delivered to two customers who had previously ordered it. An Inspector of Police demanded some milk from her aud she sold it to him and on analysis it was found to be adulterated with water. Held: respondent was not liable to conviction under 1375 English Act, Sec. 6, for selling milk not of the nature, substance and quality demanded, as his daughter had merely authority to deliver the milk to the customers and not to sell it.5
- 9. Limited authority to sell. Respondent's retailers purchased milk from a dairy farmer under a contract by which the latter agreed "to supply ..... milk, carriage paid," with a warranty of quality. The milk was delivered to the proper railway station at 5.13 a. m. and was fetched away by respondent at 8 a. m. same morning by their servant. He poured the contents of the can into two smaller cans and then took them round for distribution among respondent's customers. He had no authority to sell milk to anybody except members of respondent society who previously ordered a upply. While so delivering the milk the servant sold a small quantity to a nonmember, the agent of the appellant, an Inspector of Weights and Measures, which was deficient in quality and not of the nature, substance and quality demanded. When charged under 1875 English Act, Sec. 6, respondent cave due notice under 1899 Act Sec. 20 (1), that they intended to rely on above warranty by virtue of 1875 Act, Sec. 25. The Magistrate found that respon-

2. Lindsay v. Dumpster, (1912) S. C. (J) 110; Whittaker v. Foreshaw, (1919) 2 K. B. 419.

 1953 Mad. 362: 1953 Cr. L. J. 1639.
 Kenley v. Tonge, 60 L. J. M. C. 159 sub-nom Kearley v. Tylor, 65 L. T. 261: 56 J. P. 72: 17 Cox C. C. 328 D. C.
 Whiteker v. Freduce, 1500 J. K. B. 419: 88 L. J. K. B. 973: 21 L. 1. 10: 83 J. P. 210: 3-T. L. R. 457: 26 Cox 475 Jo. 608: 17 L. G. R. 457: 26 Cox 175 D. C.

<sup>1.</sup> Peary Mohan Saha v. Harendra Nath Roy, 1930 Cal. 295: Brown v. Foot, (1892) 66 L. T. 649: 17 Cox C. C.; Hotchin v. Hindmarsh, (1899) 2 Q. B. 181, but see 1942 Mad. 609; Murari Lal v. Emperor, 1940 All. 3.

dents purchashed the milk same in nature, substance and quality as that demanded by appellant and they sold it in the same state as when they received it from the railway company, and had no reason to b lieve at the time of the a'e to the pp llant that the milk was otherwise that of the nature, sabriance and quality damanded. No evidence was offered by the re-pondents before the Magistrate dealing with the period which displed between the arrival of the mill at the station and its being fetched by respondent. Held: (1) on the construction of the contract the milk was purchased by respondents within the meaning of 1875 Act when dilivered at the railway station and consequently the burden of slowing what happened afterwards to the milk was on them which burden they had not discharged and therefore the defence given by 1875 Act, Sec. 25 was not substantiated, (2) in selling to appellant re-pondent's servants had not acted without their authority but had only misued the actual authority to sell which they had given him and therefore respondent had sold the milk to appellant within 1875 Act, Sec. 6.1

- 10. Lizbility of servant. The agent or servant is within the prohibition of the words "no person shall sell". The Legislature is not necessarily contemplating a person who has a choice to sell at his own hand or any other person on his behalf. It is concerned to make the act of relling an act which is imputable both to the porson with whose hand it is committed and to any other person, if such there be, on whose behalf it is committed. A servant is equally liable, because if law were otherwise every master would try to keep himself out of the way and escape liability.2 Appellant who was a local fereman in the service of a company sold milk on their behalf which was found upon analysis to contain 12 per cent of added water. The milk in question had been consigned by one T by railway in two cans, each of which bore a label with the words "warranted genuine new milk with all its cream on?. There was also a written agreement between T and company whereby T agreed to supply the company with genuine good milk of best quality with all its cream on. The appellant stated the milk in question was served by him in the same state as he got it from the cans, but admitted that he had not tested it though the milk had travelled a distance of ninety miles and a lactometer had been supplied to him for that purpose. Upon the above facts the Justices convicted appellants under 1875 English Act, Sec. 6. Held, the conviction was right inasmuch as appellant, though a servant, was a seller of the milk, also Sec. 25 which exempts a purchaser in certain cases had no application and even if it had appella it had not brought himself within its provisions.3
- 11. Liability of manager. A manager of the mill which keeps or stores for sale mustard oil which is not exclusively derived from mustard seeds comes within the very wide terms of the section.4
- 12. Liability of brother of owner. R was charged for offering for sale give which was not up to the standard of purity prescribed by the Local Government. The shop wherein the ghee was expised for sale and sold belonged to a joint family of R and his brother M. R was in the shop only in the absence of his brother M and acted as his deputy. It was not suguested that R was there only as casual visitor or that he did not go there for

Elder v. Busing An Aland Conspiration Society
Ltd. 1917, 85 L. J. K. B. 1412: 417
L. T. 31: 81 J. P. 202: 38 T. L. R.
401: 61 Sol. Jo. 503: 15 L. G. R. 579:
20 Cox. G. C. I. D. G.
 Public Prosecutor v. Pattu Narasimbulu,
1953 Mad. 697; Peary Mohan Saha v.
L. r. ba. Nuth. Roy. 1936 Cal. 295: 34

C. W. N. 114: 57 Cal. 1084: 125 I. C. (iii): 31 Cr. L. J. 907: 1942 Mad. 609. 115; iiii v. Hinkarak, (1391) 2 Q. B. 181: 60 L. J. M. C. 146: 65 L. T. 149: 55 J. P. 775: 39 W. R. 607: 7 T. L. R. 513 D. C.

Devabarata Ganguli v. State of Bilar, 1950 Pat. 301: 51 Cr. L. J. 1136.

the purpose of looking after the business. Held, that R was the person who offered for sale the quantity of glar which was adulterated. R therefore with guilty of the offence. In Municipal Prosecutor v. Abu Bakkur,2 the brother-inlaw of the accused was charged with selling adulterated article of food but was acquitted. Held, that he was liable to punishment.

13. Liability of commission agent. The question of the liability of a commission agent came before the Allahabad High Court in a ruling reported in Emperor v. Kedar Nath.3 In that case Ked r Nath, a commussion agent doing business in Agra, had a quartity of car is ers of glaces me to him for sale and this ghe was exposed for sale and the Chief Saniary. In pactor took some samples and found that the was adulterated and Kedor Nath was Mr. Justice Tudball held that Kedar Nath wa liable to punishment. A shopkeeper who does not himself sell the glas on behalf of the owner but allows the owner to sell it on the premises of his sleep, the consideration for such licence bing a commission fixed by reference to a percentage of the sale price, cannot be said to be actually taking part in the sale unless there is evidence to show that he exercised any control over vendor or had any property or other interest in the ghee sold by the vendor. The shopkeeper is a mere licensor of a right to sell shee on his premises. If a commission agent of this sort who has shop at a particular place allows another person to offer ghee for sale at his shop and in his presence with profit to himself the only reasonable view to take on the facts is that the owner of the shop is 'exposing' the glice for sale equally and justly with the owner of the glic who is the vendor.4

R was a shopkeeper and commission agent for ghee. People used to bring ghee to his shop and sell through him. R used to the rge commission from them. On 4th O tober, 1935, D brought some ghas at the shop of R and was sitting. In the meantime a Smithry Inspector came there and purchased ghee from D. On an dy is this the was found to be impure as it had a small proportion of fit or oil foreign to pure ghc. Both D and R were tried and convicte!. It was contended by Rithat is war D from whom the Inspector purchased the sample of the and that he was not liable breatse D did the selling and was present. Held, that the Act parallers selling or offering or exposing for sale, etc. It would have be a impossible for D to have exposed the ghee for sale or to have sold it if R had not agreed to his daing so at the shop of R, so R was liable.5

A commission agent was found in passession of a lulterated ghe which he had purchased from certain persons on behalf of others.

Samples were taken from the gher, analysid by the Chemical Analyst,

Punjab, and found to contain 56 per cent of foreign fats.

There was no evidence that he was selling ghee. Held, that at the moment when the samples were taken the accused was the legal owner of the glee and the ghee wes not actually in the transit at the time, it was tationary in a shop of a person who was not offering it for sale and it was intended to be sent on to a third person who no doubt would offer the glac for sale. Co wietion, therefore, could not be maintained as it had not been proved that he accused was selling ghee as defined in the Act.6

The Public Prosecutor v. Kupandra Chetty, 1948 Mad. 478: 49 Cr. L. J. 720: (1948) 1 M. L. J. 468: 61 M. L. W. 400: 1948 M. W. N. 412. See also 1988 M. - 1. W. N. 428 (sale of adulterated article of food by a relation.) 1933 M. W. N. 498.

<sup>3. 40</sup> All. 861 : 1918 All. 99 : 16 A. L. J.

<sup>4.</sup> Municipal Board, Bareilly v. Rangopal, 191

All. 517: 1936 A. L. J. 712: 1936 A. W. R. 525: 163 I. C. 843. Emperor v. Ram Gopal, 1936 All. 865: 1936 A. W. R. 875: 1936 A. L. J. 1037.

<sup>6.</sup> Beharilal v. Emperor, 1939 Lah. 14.

- 14. Adulteration of vegetable gher. An accused cannot be convicted for selling adultera'ed vegetable ghee containing less than 5 per cent of sesame oil unless it is shown that there is a rule or regulation under the Act requiring that all vegetable ghee should contain at least 5 per cent of sesting oil.1
- 15. Possession. Possession must mean actual physical possession. Mere possession of adulterated food is not made a crime under the Act, but from the fact of possession a presumption is to be drawn which will establish That being so the word possession must be given a strict interpretation and cannot be extended to include constructive possession.2 Mere possession of adulterated milk does not constitute by itself an offence, and there is no scope for an inference from the mere factum of possession was for the purpose of sale. In order that any such presumption might be drawn against the accused it must first be established that he was in the habit of manufacturing or storing like articles for sale.3 The present Act, however, prohibits mere storing. A shop assistant does not have possession of his master's goods for sale, the possession is in the master.4
- 16. Store. The policy of the Act is to prevent either the sale or the munufacturing for sale or the storing or distribution of articles of food unless they are up to a certain standard of purity. In the case of storing there is no question of sale. The gist of the offence is the storing itself. The purpose of the storing is that it is for future sale. Storing is storing whether the article is sold or not sold to the Sanitary Inspector. It cannot be contend d that there can be no offence relating to storing unless the adulterated article is stored for human consumption. Nowhere in this Act is there any qualification of that description, it is nowhere made an es ential part of the offence that what is done should be done with a view to or purpose of human consumption.6 All that the prosecution is required to establish in order to secure a conviction for the offence of storing is that the samples of mustard oil which were admittedly in the shop of the accused were not derived from mustard seed.7

Bengal Food Adulteration Act (6 of 1919) (now repealed)—Position under. The provision sub-clause 5, Sec. 6 (1), Bengal Food Adulteration Act, 1919, is worded thus :

"In the case of mustard oil, it shall be derived exclusively from mustard seed."

Reading that proviso with the main section the effect is that no person shall directly or indirectly, himself by any other person on his behalf, expose for sile or minufacture or store for sile, mustard oil unless it shall be exclusively derived from must ad seed. Where a person stores for sale in his shop an oil, the bulk of hich is mustard oil but mixed with linsed oil he exposes himself to the praulty provided by law even though he chooses to call that oil not as mustard oil but 'jalmi tel' and alleges that had not intended that it

3. Publ. Pros. vt. v. Kaldi Arjuna. 1947 Mal. 374: 60 M. L. W. 300: (1947) 1 M. L. J. 327: 1947 M. W. N.

4. Walking, Ltd. v. Rubinson, 1919 99 L. J. K. B. 171: and see Challend v. Bartlett, (1953) 2 All. E. R. 832.

Makhanlal Bhomik v. Ram Bhakat Sharma, 1953 Cal. 485.

1953 Cal. 485.
6. Churman, District, Brand, Millie fra v. And Chundra Pal. 1933 Cal.619: 34 Cr. L. J. 1081: 37 C. W. N. 511: 145 I. C. 811; Rakhat Chendra v. Experio, 1930 Cal. 278: 57 Cal. 1123: 127 I. C. 57.
7. Saral Ram v. Emperor, 1934 Cal. 858; 153 I. C. 632.

<sup>1.</sup> State v. Bul Milarl, 1954 All. 97. 2. Ren Ghanta Rom Barkat v. Chairman of District Board, Ranchi, 1937 Cal. 710: Banaras idas v. Emperor, 1930 All. 595: 1930 A. L. J. 911; Sahi Nadan Puri v. Chimon. Milapur Dimit Boot. 1910 C.d. 215: 1940 | Cal. 333: 103 I. C.

should be used for human consumption. The mere placing of a label on a canister containing some article, if in fact it can be used at an article of food,

will not help him in escaping a conviction.1

17. Adulterated article in transit. In Chairman, District Board v. Sreenibash Purohit,2 two tins of ghee were seized at a railway station and found adulterated. The accused was proved to be a partner in the firm to which ghee was consigned. He was convicted for storing the ghee for sale. Held, that the conviction could not be sustained as it could not be said that the accused was storing it for sale at the railway station. A different view was taken in Hari Rakshak Dutt v. Chairman, District Board, Birbhum.3

In that case petitioner took delivery of some tins of mustard oil at the Bolpur railway station. On the same day a sample was taken from these tins by the Sanitary Inspector and it was found that mustard oil contained therein was adulterated. The peritioner and certain other persons were subsequently prosecuted and the petitioner was convicted. It is held that although the goods had not actually left the railway premises, they were nevertheless being stored for sale by the petitioner within the meaning of Sec. 6 (1) of the Bengal Food Adulteration Act, 1919. The petitioner came into physical possession of the consignment as soon as he took delivery thereof at the railway station and from the moment that he took such delivery until the goods were actually exposed for sale in his shop there can be no doubt that he was actually storing them with a view to their ultimate disposal by sale. The fact that he could have had no opportunity to examine the nature of goods between the time when he took delivery of them and the time when a sample was taken was no defence in view of sub-section (3) of Sec. 6 of the Bengal Food Adulteration Act, 1919, which was in the following terms:

> "In any pro-ecution under this section it shall be no offence to allege that the vendor, manufacturer or storer was ignorant of the nature, substance or quality of the article sold, exposed for sale or manufactured for sale by him."

However distribution of adulterated article has been brought within the purview of the present Act. Consequently even if the adulterated article of food is in a cart for the purpose of being carried, conviction in sustainable

against the owner.

In cases of this nature it is obviously necessary that all dealers and consigners of goods such as those are mentioned in Sec. 7 of this Act should exercise greatest caution as to the persons with whom they deal.

18. Storing for sale. The fact that ghee was in a cart for the purpose of being carried and was not deposited in any place for the purpose of sale, in other words that it was in transit, and not militate against the presumption

of storing for sale.4

The presumption that any food in possession of a person who is in the habit of storing like articles for sale has been stored only for sale is not unrebuttable presumption. Where, in respect of ghee kept in a tin in a shop at the rear portion there is evidence to show that it was kept there for test and not for sale and there is no evidence that the accused offered it for sale in this shop, the Court ought not to presume that the ghee was kept there for

<sup>1,</sup> C'airman, District Board, Midnapur v. Atul Chandra Pal, 1933 Cal. 619: 34 Cr. L. J. 1081: 37 C. W. N. 511: 145 I. C.

<sup>1941</sup> Cal. 491 ; Sachinandan Piri v. Chairman, Manipur District Board, 1940 Cal. 213: (1940) 1 Cal. 333. 1941 Cal. 150: 42 Cr. L. J. 522: 44 C. W. N. 1139: 194 I. C. 136.

<sup>4.</sup> Ram Charitra Ram Bhakat v. Chairmen of District Board, Ranchi, 1937 Cal. 710: 172 1. C. 809: 41 C. W. N. 1213. See also Daly v. Webb, Ir. R. 4 C. L. 309: 18 W. R. 631; William v. Allen, (1916) 1 K. B. 425: 85 L. J. K. B. 822: 114 L. T. 1205: 80 J. P. 55: 11 L. G. R. 366: 25 Cox. C. C. 425 D. C.

sale or was offered for sale and the accused (shopkeeper) cannot be vonvicted on the strength of the presumption.1

Storing of adulterated ghee for the preparation of eatables for sale in a coffee club cannot be said to be stored or offered for sale and therefore the conviction is unsustainable.<sup>2</sup>

Where on a charge of storing adulterated ghee for sale a hotel-keeper and his servant were prosecuted under Sec. 5 (1) (b) of the Madras Prevention of Adulteration Act, 1918. Held, that though the guilt of the hotel-keeper may admit of no doubt, the servant could not be convicted as he could not be said to have stored the adulterated ghee.<sup>3</sup>

19. Manufacturing and offering for sale sweetmeats as containing pure ghee which contained impure ghee. Where ghee alleged to be mixed with other substances was taken from a shop where sweetmeats and pakoras were offered for sale and indeed from a frying-pan in which other sweetmeats and pakoras were being made, a presumption can be raised that sweetmeats and pakoras in the shop of the accused had been manufactured for sale and that he was manufacturing and offering for sale sweetmeats and pakoras as containing pure ghee which contained impure ghee. 4

The fact that a merchant mixes inferior oil with superior oil leads to the conclusion that it is the intention of the merchant to sell the mixture as superior oil otherwise the action of the merchant would be unnatural and mysterious.<sup>5</sup>

- 20. Sell. The definition of sale in Sec. 2 (xiii) of the present Act has been made much wider than in the Sales of Goods Act, 1930. It covers—
  - (i) sale of any article of food, for cash, or on credit or by way of exchange whether by wholesale or retail provided the article is sold for human consumption or use for analysis;
  - (ii) agreement for sale; (iii) an offer for sale;

(iv) exposing for sale;

(v) having in possession for sale; and

(vi) an attempt to sell.

There is no sale unless the property in the goods passes from seller to the buyer, and upon a charge of selling goods in breach of the Act the state of goods, if it is material, must be ascertained at the time the property passes

up till when the seller is resposible.6

"In order that there may be offer for sale there must be some evidence that the offer was communicated or put on its way though it need not be proved that the offer reached the person to whom it was made. Bread in a cart for delivery to customers is offered for sale. But issue of a handbill offering to sell an article is not necessarily the same thing as offering the article for sale. An article may be exposed for sale although it is wrapped and not in

- Srinivasa Ras In re, 1944 M. W. N. 553;
   (2) 1944 2 M. L. J. 119; 1944 Mad. 477.
- 2. In re Podukodu Iswara Subramanya Iyer, Petitiane, 1940 Mad. 938: 1940 M. W. N. 881: (1940 2 M. L. J. 238: 52 M. W. N. 300: 191 I. C. 557.

Anantana a in I Ivi In ie. 1940 M. W.
 N. 1242: 52 M. L. W. 893: 42 Cr. L.
 J. 339: 192 I. C. 817: 1441 Mad.

420.

 N. bhanda, Hol tram v. Emp vor, 1939 Sind 337: 1910 Kar. 91: 185 1. C. 872.
 Public Prosecutor v. Nagalla Sesh igiri Rao,

- 1949 Mad. 155: 50 Cr. L. J. 198: 1948 M. W. N. 484: (1948) 2 M. L. J. 124.
- 6. See also Watson v. Coupland, (1945) 1 All E. R. 217; Mischeff v. Springett, (1942) 2 K. B. 331: 2 All E. R. 349. Halsbury's Laws of England, 3rd Ed. Vol. 17, p. 483.
- 17, p. 483. 7. See Wills v. Maddison, (1943) I All. E. R. 315.
- 8. See Keating v. Harwood, (1926) 135 L T. 29.
- 9. World's Tea Co. v. Gardner, (1895) 59 J. P. 358.

view of the customer.1 But if it is placed behind a screen or in a backroom this may not be so. Bread on a cart for delivery to customers has been held to be exposed for sale2 milk not intended to be sold as such but to be added to tea and other liquids sold is exposed to sale.3 In Ollet v. Jordan food being delivered in pursuance of a special order was held to de exposed for sale so long as something remained to be done before the article become property of the purchaser but in Clerk v. Struckun's food made to special o der of a customer and on view on the shop pending delivery was held not to be exposed for sale, i. e. not exposed in order to attract offers to purchase from the public.6

There was nothing in the Punjab Pure Food Act, 1929, which made the act of exposing adulterated milk for sale an offence. However in re exposing adulterated article for sale has been brought within the purview of the present Act. Consequently even if an adulterated article is exposed for sale it is by itself an offence.

If the accused commits an offence by offering adulterated ghe for sale, it does not cease to be sale because of an omission on the part of Sanitary Inspector in giving a notice in writing to the vendor that he had taken the ghee for the purpose of analysis. Notice has been provided for the protection of the vendor, so that he himself might, if he so wished, have the ghee analysed privately so that he might be satisfied that it was really adulterated in the manner and to the extent indicated by the Public Analyst. Accused persons not infrequently take advantage of the notice given to them, and get the ghee analysed privately for the purpose of differding themselves against any charge that the authorities might prefer against thom. If notice is not given accused persons may have cause for complaint that he was not given a proper opportunity of defending himself. That argument would of course be available as much to an employee as to the owner. Notice is not in any way connected with the prosecution or the trial so as to make it an indispensable preliminary to either. If an accused contends that he would have had his part of the sample analysed but for the failure to give him notice in writing, the Court would have to consider the reasonableness of that plea.8

The price of the ghee being necessarily included in the price of the meals served by a hotel-keeper to his customers, there is a sale and the acquittal of the accused on the ground that the give cannot be said to be said is natenable. A Co-operative Milk Society registered under Muleus Co-operative Societies Act, 1932, has got as a body corporate a separate existence apart from its individual members and when an article belonging to this body corporate is transferred to one of its individual members for consideration it cannot be said that it does not amount to a sale under the Act.10 A ha'wai found in possession of ghee below standard is guilty of breach of the provisions prohibiting storing or sale of adulterated food although he do s not sell ghee as such but sells sweetmeats.11

- Wheat v. Brown (1892) 1 Q. B. 418.
- 2. See Keating v. Harwood, (1926) 135 L. T.
- See Mc Nair v. Terroni, (1915) 1 K. B. 41 (offence of refusal to sell to sampling
- officer.) (1918) 2 K. B. 41 (a case of seizure of unwholesome food for condemnation.)
- (1940) S. C. (J) 29 (a case of refusal to sell to a sampling officer.)
- Halsbury's Laws of England, 3rd Ed., Vol. 17, p. 483.
   Tikam Chand v. Man Mal, Food Inspector,
- 1956 Ajmer, 47.

- In re Bellemkarda Kankayya, 1942 Mad. 609: (1942) 2 M. L. J. 172: 55 M. L. W. 464: 1942 M. W. N. 139.
- Public Prosecutor v. Narayana, 1940 Mad. 173: 41 Cr. L. J. 377: 1939 M. W. N. 1128: 50 M. L. W. 790: 186 L. C. 785.
- Public Prosecutor v. Y. Rama Chandrayya, 1948 Mad. 329: 49 Cr. L. J. 395 61 M. L. W. 114: 1948 M. W. N. 159.
- (1948) I.M.L.J. 117.

  Dewan Singh v. Emporor, 1937 Lah. 7(2: 171 I. C. 16; 39 P. L. R. 459: 38 Cr. L. J. 1026,

21. Adulterated food. The Prevention of Food Adulteration Act makes it penal to sell adulterated articles. It does not excuse the offence on the ground that the purchaser knew that what he was purchasing was not pure foodstuff. The Act is intended to protect the public from using adulterated articles and therefore it has made it penal to sell these adulterated articles to persons irrespective of the fact that the purchaser knew the article to be adulterate or otherwise.

It is no defence to say that the article can be adulterated and sold in the market with the publication of the fact that they are adulterated <sup>1</sup>

The knowledge and awareness of the purchaser is wholly immaterial as the object and policy of the statute is to protect the public by prohibiting the sale in any circumstance of adulterated milk or milk which did not come up to prescribed standard of purity.<sup>2</sup>

A private person purchased a tin of butter from a respectable firm for use in a festival and resold it, with a warranty that it was pure and unadulterated It was however found to be adulterated. Held, that as he had himself no knowledge of the butter to justify him in saying that it was or was not adulterated, he was guilty though in all probability he acted foolishly rather than criminally.3 Where accused has stored for sale in shop mustard oil but mixed with linseed oil, he exposes himself to penalty provided by law even though he chooses to call that oil not as mustard oil but jalani tel.4 The ignorance of this accused of the nature or quality of the article is no defence to a porsecution under the section.<sup>5</sup> In Public Prosecutor v. Venkandassi Naga Pulliah Chetty,6 the shopkeeper had in his shops some tins labelled "Sri Sai Coffee Tablets" "pure coffee 50 per cent and roasted coffee husk 50 per cent," He sold some 50 per cent and roasted coffce husk 50 per cent," He sold some of the tablets to the Sanitary Inspector and on analysis they were found to contain not 50 per cent of coffee and 50 per cent of roasted coffee husk but 15 per cent of coffee and 85 per cent of some other substance referred to as imitation coffee which contained no coffee husk. On the footing of this analysis he was prosecuted for alleged adulteration. Held, that it was no defence to the prosecution to allege merely that the accused was ignorant of the nature of substance or quality of the article sold by him and that he sold the article in the same condition in which he received it. The use of the word 'adulterated' with respect to ghee necessarily are only that the sample of ghee contained an article which was used to debase ghee and therefore could not have been derived from milk at all.7

To offer linseed oil as solid sarson oil is not adulteration of food as there can be no question of mixture or dilution extraction of substance or ingredient. It may be a clear case of cheating or at least attempted cheating but the conviction under the Act cannot be supported.

 Rakhal Chandra Dutta v. Purna Chandra Ghosh, 1930 Cal. 273: 31 Cr. L. J. 1151: 34 C. W. N. 281: 127 I. C. 57: 57 Cal. 1123.

 The Public Prosecutor v. Modi Kondayya, 1947 Mad. 184: Cr. L. J. 677: 1946 M. W. N. 669: (1946) 2 M. L. J. 311: 59 M. L. W. 608: 231 I. C. 83: (1947)

Mad. 632.

3. Pattabi Chetty In 12. 1945 Mad. 446: 47 Cr. L. J. 242; 1945 M. W. N. 559: (1945) 2 M. L. J. 130: 222 I. C. 33.

4. Chairman, District Board, Midnapur v. 1val Chandra Pal, 1933 Cal. 619: 34

- Cr. L. J. 1081: 37 C. W. N. 511: 145 I. C. 841.
- Public Prosecutor v. Narayana Ayyar, 1940
   Mad. 173: 41 Cr. L. J. 377: 1939
   M. W. N. 1128: 50 M. L. W. 790: 186
   I. C. 785.

6. 1946 Mad. 414: (1946) 1 M. L. J. 461: 1946 M. W. N. 352 (2): 59 M. L. W. 322: 226 I. C. 264: 47 Cr. L. J. 869.

7. Ram Dayal Gupta v. Emperor, 1927 All. 7301: 28 Cr. L. J. 313: 99 I. C. 71.

8. Mangal Mal v. The State, 1952 Punj. 140: 1952 Cr. L. J. 492.

The mere presence of some foreign matter in small quantity is not necessarily an offence. The court has to decide whether the admixture of foreign matter was so large that it could not be explained otherwise than by fraud.1 It is a matter of common knowledge that where wheat crop, when gathered, generally contains a certain percentage of barley which it is not worthwhile to remove in view of the trouble involved in the process and in view of negligible proportion in which it exists. Mixture of barley flour arising from such cause cannot make the flour any the less pure wheat flour as is popularly understood. Where there is nothing to show that the seller offered to sell or exhibited for sale wheat flour which contained barley flour to any but a negligible extent and that it was due to a cause other than the inevitable one, namely, the presence of barley in wheat crop when the latter was threshed and there is nothing to indicate that the flour which the accused offered for sale was to the prejudice of the purchaser desirous of purchasing wheat flour commonly accepted as such, the evidence is not sufficient to prove adulteration.2 In Budhsen v. Emperer,3 it was however held that the Act does not exempt from punishment a per on who sells as pure wheat flour which is not pure but contains some mixture of barley however slight. The fact that amount of adulteration is negligible or is universally tolerated may affect the sentence but cannot affect the conviction.

When a person obtains goods from a reputable wholesale dealer and sells them in unopened tins duly labelled in the condition in which they were received, he is not liable to be punished under the Prevention of Food Adulteration Act unless here is reason to believe that he is not speaking the truth where he says that he believed the goods to be genuine. It would be unreasonable to hold that the dealer, with unopened tins received in due course from a reputable wholesale dealer must prove that he made some

experiments to test the quality of the goods.4

When butter which is offered for sale in scaled tins in the state in which it was purchased shows extra moisture which must have got unavoidably mixed in the process of manufacture of butter the conviction for selling a lulterated butter cannot be sustained.5

Where a shopkeeper consistently states that the article he was selling was not give but cocounut oil and that it was not intended for food but for manufacturing soap, the impression of the Food Inspector that he was purchasing ghee will not make the article in question adulterated.6

Burden of proof. The burden of proof that article of food is adulteration lies upon the prosecutor, but that burden may in effect be assisted or even completely discharged by the admissions of the accused.7

# Analysis of Food

8. The State Government may, by notification in the official Gazette, appoint persons in such number as Public Analysts. it thinks fit and possessing such qualifications as may be prescribed, to be Public Analysts and define the local areas over which they shall exercise jurisdiction:

Saruplal v. Emperor, 1936, Pat. 636: 17 P. L. J. 593: 166 I. G. 206. Mithanlul v. Emperor, 1934 All. 439; 149 I. G. 222: 35 Cr. L. J. 913. 1.

1934 All. 329 : 235 Cr. L. J. 681 : 148 I. C. 384.

Pranjivan v. Emperor, 1931 Pat. 337 (1): 12 P. L. T. 470: 131 I. C. 541: 32 Cr. L. J. 741.

Delhi Bather v. Corporation of Madras,

1940 Mad. 221:188 I. C. 150: (1940) 1 M. J. J. 169: 1939 M. W. N. 1224:51 M. L. W. 203:41 Cr. L. J.

Bohro Raghubar Dayal v. Emperor, 1931 Ali. 705: 1931 A. L. J. 690: 133 I. C. 418: 32 Cr. L. J. 1031: 1931 Cr. C. 1041.

Nebhandas Hollaram v. Emperor, 1939 Sind 337: 1940 Ker. 91: 185 I. C. 832.

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be so appointed:

Provided further that the State Government may appoint one Public Analyst for two or more local areas, such local areas

being regarded as one unit for the purposes of this Act.

## SYNOPSIS

1. English Law.

Analyst.

- Scope.
   Qualifications and duties of Public
   Duties of Public Analyst.
   Report of Public Analyst.
- 1. English law. Section 66 of the English Food and Drugs Act, 1930, which details the special provisions relative to Public Analysts runs as under:

## Section 66, Food and Drugs Act, 1938-Public Analysts

- (1) Every food and drugs authority shall appoint in accordance with the provisions of this section one or more persons (in this Act referred to as "Public Analysts") to be analysts of food and drugs within their area.
- (2) No person shall be appointed a Public Analyst unless he possesses either the prescribed qualifications or such other qualifications as the Minister may approve, and no person shall be appointed Public Analyst for any area who is enaged directly or indirectly in any trade or business connected with the sale of food or drugs in that area.
- (3) The appointment of a Public Analyst and the terms of his appointment and the removal of a Public Analyst shall require the approval of the Minister.
- (4) I ood and drugs authority shall pay to a Public Analyst such remuneration as may be agreed, and such remuneration may be expressed to be payable either in addition to any fees received by him under this part of this Act, or on condition that any fees so received by him are paid over by him to the authority.
- (5) Regulations prescribing qualifications for the purposes of subsection (2) of this section shall be laid before Parliament as soon as may be after they are made.
- (6) A food and drugs authority who appoints only one Public Analyst may appoint also a deputy to act during any vacancy in the office of Public Analyst, or during the absence or incapacity of the holder of the office.

The foregoing provisions of this section with respect to the qualifications, appointment, removal and remuneration of a Public Analyst shall apply also in relation to a Deputy Public Analyst, and any reference in the subsequent section of this Act to a Public Analyst shall be construed as including a reference to a Deputy Public Analyst appointed under this section.

- 2. Scope. This section empowers State Government to appoint certain persons to be Public Analysts, and define the local area over which they will exercise jurisdiction. No person can be appointed a Public Analyst who has any financial interest in the manufacture, import or sale of any article of food.
- 3. Qualifications and duties of Public Analyst. A person shall not be qualified for appointment as Public Analyst unless he—

- (i) is a graduate, with chemistry as one of the subjects, of a University recognized for this purpose by the State Government and has had not less than five years' post-graduate experience in the analysis of food in a laboratory under the control of-
  - (a) Public Analyst appointed under the Act; or (b) a Chemical Examiner to Government, or

(c) a Fellow of the Royal Institute of Chemistry of Great Britain (Branch E); or

(d) the head of an institution specially approved for the purpose by the State Government; or

(ii) is an M. Sc. in Chemistry, or holds a research degree on the subject, of a University recognized for this purpose by the State Government, and has had not less than two years' postgraduate exp. rience in the analysis of articles of food under the control of--

(a) Public Analyst appointed under the Act; or (b) a Chemical Examiner to Government; or

(c) a Fellow of the Royal Institute of Chemistry of Great Britain (Branch E); or

(d) the head of an institution specially approved for the purpose by the State Government; or

- (iii) is a graduate in Medicine of an University recognized for the purpose by the State Government with a postgraduate qualification in Public Health and with experience in food analysis for at least five years; or
- (iv) is a Fellow of the Royal Institute of Chemistry of Great Britain (Branch E with at least one year's experience of food analysis

Provided that for a period of four years from the commencement of the Act, persons whose qualifications, training and experience are regarded by the State Government as affording, subject to such further training, if any, as may be considered necessary, a reasonable guarantee of adequate knowledge and competence may be appointed as public analyst. The 'Analyst of Harcourt Buttler Technological Institute, Kanpur, is not a Public Analyst within the meaning of Sec. 3 (h) of the Bihar Prevention of Food Adulteration Act, 1948, nor is he a Chemical Examiner within the meaning of Sec. 3 (b) of that Act.2

- 4. Duties of Public Analyst. (1) On receipt of a package containing a sample for analysis from a Food Inspector or any other person the Public Analyst or an officer authorized by him shall compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition of the seals thereon.
- (2) The Public Analyst thall cause to be analysed such samples of articles of food as may be sent to him by Food Inspector or by any other person under the Act.
- (3) After the analysis has been completed he shall forthwith supply to the person concerned a report in Form III of the result of such analysis.3

In a prosecution for adulteration of food whether the food is adulterated or not is a question for the Court to decide and not for Public Analysts. The form prescribed by the Act contemplates only the opinion of the Public Analyst whether the article of food contains excess or deficiency in constituents.4

teration Rules, 1955.

Devabrata Gunguli v. The State of Bihar,
1950 Pat. 301:51 Cr. L. J. 1136.

<sup>1.</sup> Rule 6 of the Prevention of Food Adul- 3. Rule 7 of the Prevention of Food Adulteration Rules, 1955.

Gundaram v. Emperor, 1942 Pesh. 47 (2): 200 I. C. 880: 43 Cr. L. J. 728. 4.

5. Report of Public Analyst. The form of report to be used by the Public Analyst has been prescribed by the Prevention of Food Adulteration Rules, 1955, as follows:

## Report by the Public Analyst

		Report No.————
Public Analyst for—under the provisions of the on the—from—	Prevention of Foo day of a sample of	duly appointed and Adulteration Act, 1954, received ————————————————————————————————————
I further certify that declare the result of my a	I have analysed to analysis to be as fol	
and am of the opinion the	at————————————————————————————————————	19 .
Address————		(Signature) Public Analyst.

9. (1) Subject to the provisions of Sec. 14 the State Government may, by notification in the official Gazette, appoint persons in such number as it thinks fit, having the prescribed qualifications to be Food Inspectors for the purposes of this Act, and they shall exercise their powers within such local areas as that Government may assign them:

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be so appointed.

(2) Every Food Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (Act XLV of 1860).

## SYNOPSIS

Scope.
 Qualifications of a Food Inspector.

4. Who may procure samples and submit for analysis.

3. Duties of a Food Inspector.

1. Scope. This section is enacted on the lines of the previous section and a comparison of the two sections shows that in the matters of the appointments, prescribed qualifications and disqualifications they are practically identical. The present section however does not contain the provisions of the second proviso to Sec. 8. So one or more Food Inspectors can be appointed for a specified area.

Sub-section (2) of the present section provides that every Food Inspector shall be deemed to be a public servant within the meaning of Sec. 21 of the Indian Penal Code (NLV of 1860). A Food Inspector may also exercise the powers of a Folice Officer under Sec. 57 of the Code of Criminal Procedure.

2. Qualifications of a Food Inspector. A person shall not be qualified for appointment as Food Inspector unless he—

- (i) is a Medical Officer Incharge of the Health Administration of a local area; or
- (ii) is a graduate in Medicine, or a Licentiate in Medicine; or
- (iii) is a holder of qualification in Sanitary Science registrable as an additional qualification by the State Medical Council, or Health Officers' Examination Certificate, or poss ses qualifications prescribed by the respective State Governments for appointment of Sanitary Inspectors or Health Inspectors:

Provided that for a period of four years from the date on which the Act takes effect, persons whose qualifications, training and experience are regarded by the State Covernment as affording, subject to such further training, if any, as may be considered necessary, a reasonable guarantee of adequate knowledge and competence, may be appointed as Food Inspectors.1

3. Duties of a Food Inspector. It shall be the duty of the Food Inspector-

> (a) to inspect as frequently as may be prescribed by the Food Health) Authority or the local anthority all establishments licensed for the manufacture, storage or sale of an article of food within the area assigned to him;

> (b) to satisfy himself that the conditions of the licences are being

observed:

- (c) to procure and send for analysis, if necessary, samples of any articles of food which he has reason to suspect are being manufactured, stocked or sold or exhibited for sale in contravention of the provisions of the Act or rules framed thereunder;
- (d) to investigate any complaint which may be made to him in writing in respect of any contravention of the provision of the Act, or rules framed thereunder;
- (e) to maintain a record of all inspections made and action taken by him in the performance of his duties, including the taking of samples and the seizure of stocks, and to submit copies of such records to the Health Officer or the Food (Health) Authority as directed in this behalf;

(f) to make such enquiries and inspections as may be necessary to detect the manufacture, storage or sale of articles of food in contravention of the Act or rules framed thereunder;

(g) to stop any vehicle suspected to contain any food intended for

sale or delivery for human consumption;
(h) when so authorised by the Health Officer having jurisdiction in the local area concerned or the Fo d (Health) Authority, to detain imported packages which he has reason to suspect contain food, the import or sale of which is prohibited; and

(i) to perform such other duties as may be entrusted to him by the Health Officer having jurisdiction in the local area concerned or

the Food (Health) Authority.2

Who may procure samples and submit for analysis. Even if the Sanitary Inspector who submits the samples to the analysts it has no jurisdiction to exercise those powers within the limits of that particular area, samples submitted must be deemed to have been submitted under the Act and the Public Analyst's certificate will be admissible in evidence without

<sup>1.</sup> Rule 8 of the Prevention of Food Adulteration Rules, 1955.

<sup>2.</sup> Rule 9 of the Prevention of Food Adulteration Rules, 1955.

formal proof. It is immaterial whether the Sanitary Inspector be regarded as an official or as a private individual, obtained possession of the samples in accordance with the provisions of the Act or not. What is important is that the safeguards which the Act lays down should be complied with.1 A Sanitary In pector of a municipality took such samples of ghee from a shop and sent them to the Public Analyst. The Public Analyst gave a certificate stating that the ghee sent was grossly adulterated. There was no evidence that the Commissioners of the Municipality specially authorised the Sanitary Inspector to exercise the powers of a Food Inspector. It was held that the Sanitary Inspector could be taken to be a private person who purchased samples and sent the same for analysis by the Public Analyst. Such a private person could do so under the Act.2

Even if a vendor is exempted from the legal compulsion to sell a small sample, in case he wishes to sell a whole sealed parcel, it does not nullify the sale if he voluntarily sells a small sample. The fact that the statute gives an authorised person the power of compulsory purchase does not affect the right which such authorised person has in common with every member of the public of proposing to purchase goods and, if the vendor assents of making that purchase. Therefore there is no force in the argument that as the Inspector had not the power to compel the sale to him of a small quantity as sample, it was contrary to law for him to take such a small quantity.3

10. (1) A Food Inspector shall have power— Powers of Food Inspectors.

- (a) to take sample of any article of food from—
  - (i) any person selling such article;
  - (ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee:
  - (iii) a consignee after delivery of any such article to him; and
- (b) to send such sample for analysis to the Public Analyst for the local area within which such sample has been taken;
- (c) with the previous approval of the Health Officer having jurisdiction in the local area concerned, or with the previous approval of the Food (Health) Authority, to prohibit the sale of any article of food with a view to preventing the outbreak or spread of any infectious disease.
- (2) Any Food Inspector may enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take sample of such articles of food for analysis.
- (3) Where any sample is taken under clause (a) of subsection (1) or sub-section (2), its cost calculated at the rate at

Sonwal Ram v. Emperor, 1934 Cal. 858: 153 I. ( . 632.
 Manindra Nath Banerjee v. Jotish Chandra Data, 1937 Cal. 60: (1937) 1 Cal. 765:

<sup>38</sup> Cr. L. J. 745: 169 I. C. 251. 3. Karinda Sardo v. Emperor, 1935 Pat. 521 16 P. L. T. 655: 158 I. C. 728,

which the article is usually so'd to the public shall be paid to the person from whom it is taken.

- (4) If any article intended for food appears to any Food Inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe custody of the vendor such article in order that it may be dealt with as hereinafter provided.
- (5) The power conferred by this section includes power to break open any package in which any article of food may be contained or to break open the door of any premises where any article of food may be kept for sale:

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called upon to do so:

Provided further that the Food Inspector shall, in exercising the powers of entry upon, and inspection of any place under this section, follow, as far as may be, the provisions of the Code of Criminal Procedure (Act V of 1898), relating to the search or inspection of a place by a police officer executing a search warrant issued under the Code.

- (6) Any material found in the possession of a manufacturer of any article of food or in any of the premises occupied by him as such and being apparently of a kind which may be employed for purposes of adulteration and for the possession of which he is unable to account to the satisfaction of the Food Inspector, may be seized by the Food Inspector and if necessary a sample of such material submitted for analysis to a Public Analyst.
- (7) Where the Food Inspector takes any action under clause (a) of sub-section (1), sub-section (2), sub-section (4) or sub-section (6), he shall, as far as possible, call not less then two persons to be present at the time when such action is taken and take their signatures.
- (8) Any Food Inspector may exercise the powers of a public officer under Sec. 57 of the Code of Criminal Procedure, 1898 (Act V of 1898), for the purpose of ascertaining the true name and residence of the person from whom a sample is taken or an article of food is seized.
- (9) Any Food Inspector exercising powers under this Act or under the rule made thereunder who—

(a) vexatiously and without any reasonable grounds of suspicion seizes any article of food; or

(b) commits any other act to the injury of any person without having reason to believe that such act is

necessary for the execution of his duty shall be guilty of an offence under this Act and shall be punishable for such offence with fine which may extend to five hundred rupees.

### SYNOPSIS

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 Scope.
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S. 52: Mode of searching woman.

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S. 102: Person in charge of a closed place to allow search.

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3. Obtaining samples.

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Code

S. 161: Public servant taking gratification other than legal remuneration in respect of an official act.

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ceedings.

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S. 176: Omission to give notice or information to public servant by person legally bound to give it.

S. 177: Furnishing false informa-

tion.

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S. 182: False information with intent to cause public servant to use his lawful power to the injury of another person.

S. 183: Resistance to the taking of property by the lawful authority of a public servant.

S. 184: Obstructing sale of property offered for sale by authority.

of public servant.

85: Illegal purchase of

S. 185: Illegal purchase or bid for property offered for sale by authority of public servant.

S. 186: Obstructing public servant in discharge of public functions.

S. 187: Omission to assist public servant when bound by law to give assistance.

S. 188: Disobedience to order duly promulgated by public servant.

S. 189: Threat of injury to public servant.

S. 190: Threat af injury to induce person to refrain from applying for protection to public servant.

 Form of order not to dispose of stock.
 Form of receipt for food seized by a Food Inspector.

1. English Law. In England the officers mainly concerned with food and drugs administration are the Sanitary Inspector and Medical Officer of Health. In some areas the Veterinary Inspector may be appointed to carry out work in connection with the inspection of meat and foods. Food and drugs anthorities are also required to appoint a Public Analyst to carry out the chemical analysis of samples of food and drugs. Some local authorities and county councils appoint as sampling officers, police officers, inspectors of weights and measures, and officers of the public control department. Local authorities owning markets are required to appoint officers to attend to the weighing and measuring of articles sold in the market. Section 100 (1) of the English Food and Drugs Act, 1938, which defines an 'authorized officer' for the purposes of that Act runs as follows:

"Authorized officer" means, as respects any council, an officer of the council authorized by them in writing, either generally or specially to act in matters of any specified kind or in any specified matter and, for the purposes of the provisions of this Act relating to the taking of samples, includes a police constable so authorised with the approval of the police authority concerned.

### Provided that-

- (a) the Medical Officer of Health and Sanitary Inspector of a council shall by virtue of their appointments be deemed to be authorized officers for all the purpose; of this Act;
- (b) any member of the Royal College of Veterinary Surgeons employed by the council for the purpose of the inspection of food shall be deemed to be an authorized officer for the purpose of the examination and seizure of meat under the provisions of this Act relating to unsound food;
- (c) no officer of a council other than the Medical Officer of Health, a Sanitary Inspector or a member of the Royal College of Veterinary Surgeons employed as aforesaid shall be authorised to act in relation to the examination and seizure of meat.

The Sanitary Inspector is the officer mainly concerned with the administration of the provisions of the Act of 1938. It should be noted, however, that a properly qualified Veterinary Surgeon, who has been appointed by a local authority for the purpose of the inspection of food, is, exception, an authorized officer for the purpose of the examination and seizure of meat. If,

<sup>1.</sup> Food and Drugs Act, 1938, S. 51 (1); 31 Halsbury Statutes 285.

however, a Veterinary Surgeon deals with foods other than meat, he must be specially authorized to do so by the local authority concerned. It should also be observed that the examination and seizure of meat can only be carried out by a Sanitary Inspector, Medical Officer of Health or Veterinary Surgeon.

In order the authorised officers under the English Act of 1933 may be able to enter premises necessary powers are contained in Sec. 773 in the same Act.

2. Scope. This section confers wide powers upon Food Inspectors.

A Food Inspector can take samples of any article of food from a person in possession of the article.

He can enter and inspect any place where an article of food is manufactured, stored or exposed for sale and take samples of such articles of food.

Under sub-section (3) of this section it is provided that when a sample is taken its cost shall be paid to the person from whom it is taken.

A Food Inspector can send the samples to the Public Analyst for analysis.

A Food Inspector with the previous approval of the Local Health Officer or the Food (Health) Authority can prevent the sale of any article of food to prevent the outbreak or spread of any infectious disease.

If any article of food appears to be adulterated or misbranded the Food Inspector may seize and carry away or keep in safe custody of the vendor, whole of it without paying for its price.

He can also seize any material found in possession of a manufacturer which can be employed for purposes of adulteration or which cannot be accounted for to the satisfaction of the Food Inspector.

Before he seizes any material or takes any sample of the food he must call upon two persons who will act as witnesses.

A Food Inspector can break open any package containing any article of food.

He can break open the door of any premises in which any article of food is kept, if the owner or any person in occupation of the premises is present therein but refuses to open the door. In exercising these powers of inspection and entry the Food Inspector should follow the provisions of the Cr. P. C. (V of 1898) relating to search or inspection of a place by a police officer executing a search warrant issued under that Code. Such provisions are laid down in Secs. 48, 52, 57, 102 and 103 of the Cr. P. C. which are reproduced below:

Section 43, Cr. P. C.—Procedure where ingress not obtainable. If ingress to such a place (place entered by person sought to be arrested) cannot be obtained under Sec. 47 it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public such person or police officer shall before entering such apartment eithe notice to such woman that she is at liberty to withdraw and afford her rea onable facility for withdrawing and may then break open the apartment and enter it.

Section 52, Cr. P. C.—Mode of searching woman. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

Section 57, Cr. P. C. – Refusal to give name and residence. When any person who in the presence of a police officer has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence and gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond with or without surcties to appear before a Magistrate if so required:

Provided that if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India.

(3) Should the true name and residence of such person not be a certained within twenty-four hours from the time of arrest, or should be fail to execute the bond, or if so required, to furnish sufficient sureties he shall forthwith be forwarded to the nearest Magistrate having jurisdict on.

Section 102, Cr. P. C.—Persons in charge of a closed place to allow search.

(1) Whenever any place liable to search or inspection under this chapter (i.e. Chapter VIII) is closed, any person residing in, or being in charge of such place shall, on demand of the officer or other person executing the warrant, and on production of warrant allow him free ingress thereto and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided b. Sec. 43.

(3) Where any person in or about such place is reasonably suspected of concealing about his person, any article for which search should be made, such person may be searched. If such person is a woman the directions of Sec. 52 shall be observed.

Section 103, Cr. P. C.—Search to be made in fresence of witnesses. (1) Before making a search under this chapter, the officer or other per on about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them to do so.

- (2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other persons and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of search unless specially summoned by it.
- (3) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.
- (4) Whenever any person is searched under Sec. 102, sub-cction 3, a list of things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.
- (5) Any person who without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under Sec. 187 of the Indian Penal Code.

"Section 187. Indian Penal Code—Omission to assist public servant when bound by law to give assistance. Whoever being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month or with fine, which may extend to two hundred rupees or with both;

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purpose of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both."

When the powers given to Food Inspectors are vast, the vendor has also to be protected against the misuse of these powers and hence sub-section (9) has been put in. This sub-section provides for prosecuting the Food Inspectors in case he misbehaves himself but the cases in which he would be liable to punishment are only two and tho e two cases are provided in clauses (a) and (b) of this sub-section (9). It is only in these two cases that he can be proceeded against under this Act.

For further powers and duties of Food Inspectors see Rule 9 of the Prevention of Food Adulteration Rules, 1954, which is reproduced under Sec. 9.

3. Obtaining samples. In case of samples which are taken under clause (a) of sub-section (1) or sub-section (2) the Food Inspector having asked for the quantity of food must tender the price thereof to the vendor. The money must be actually tendered for the article the Food Inspector wishes to purchase otherwise no offence is committed in relation to abstraction.

In deciding what food to sample, the Food Inspector should keep in close touch with the Public Analyst, so that new foods and new varieties or old foods may be sampled as they come on the market. It is obviously unnecessary to take many samples of well-known brands of prepacked foods, as they are widely distributed throughout the country and will consequently be liable to be sampled fairly regularly in other districts.

In order that the Public Analyst may have a sufficient amount of the food to enable him to carry out his analysis, it is essential that the Food Inspector should obtain an adequate quantity to enable each one-third portion of the sample to be analysed.

4. Payment of cost to vendor. Before the commencement of this Act there was a controversy as to whether purchase by Food Inspector for purposes of analysis is sale. In Akhoy Kumar Ghose v. Corporation of Calcutta, a Bench of the Calcutta High Court consisting of Chotzarard and Lord Williams, JJ. considered that there was no sale and they were of the opinion that a compulsory sale made under the provisions of Sec. 424 clause (1), Calcutta Municipal Act, 1923 (corresponding to Sec. 10 of the Bengal Food Adulteration Act) cannot make any person amenable to the punishment provided for under Sec. 488 of the same Act. In Narendra Nath v. Emperor, Lodge, J. held him elf bound by the Division Bench decision in Akhoy Kumar Ghose's

See Swift on Food Adulteration pp. 59-60.
 1928 Cal. 320: 32 C. W. N. 892.

<sup>3. 51</sup> C. W. N. 260.

case. The decision in the case of Akhoy Kumar Ghose was dissented from and not considered to be binding by a Bench of the Calcutta High Court consisting of Sir Charu Chandra Ghose, Acting Chief Justice and Malik, J. in the case of Davis Hewlett & Co. v. Emp ror, their Lordships said that they did not consider themselves in that particular case bound by the authority and were not prepared to follow the same. Dealing with the question of compulsory sale Chunder, J. of the same High Court in the case of Dr. Makhan Lal Bhowmik v. Ram Bhakat Sharma,2 expresses himself in these words: "In any care if any one takes away property without consent of the owner and subsequently pays him the compensation of the same it does not come within either the dictionary meaning or legal meaning of sale which is based upon violation".

In Madras case, Public Prosecutor v. Srinivasa Rao, 3 Lakshmana Rao, J. held that a secretary and an accountant of a co-operative society supplying butter to Sanitary Inspector under Sec. 14, Madras Prevention of Adulteration Act, cannot be convicted as supply of a sample to Sanitary Inspector is not a sale nor can secretary or the accountant be said to offer the butter for sale. Again in Bellemokanda Kankayya, In re,4 Howill, J. dealt with this matter as follows:

> "The charge against the petitioner was of offering ghee for sale, but it was argued that he would be guilty of selling the ghee. A sale is a voluntary transaction, even when it is preceded by an agreement to sell. When a person exhibits articles in his shop, he is making a general offer to sell and any person who comes into the shop and offers the price accepts his offer but the intending purchaser cannot use physical force or threats to compel the owner to part with the goods. If he does the transaction is not sale, If the Sanitary Inspector had not exercised his powers under Sec. 14 (Madras Prevention of Adulteration Act) but had merely tendered the money and the petitioner had voluntarily handed over the goods then there would have been a sale, and the fact that it was subsequently found that the goods were required not for consumption but for analysis would make no difference to the nature of transaction that had been entered into. In this case petitioner would presumably not have parted with the goods voluntarily when he knew that they would be used for the purpose of bringing a case against him and his master. The petitioner was not therefore guilty of selling ghee. Lakshman Rao, J. in a similar case held that the party with a commodity when it is demanded by the Sanitary Inspector in exercise of his powers under Sec. 14 (Madras Prevention of Adulteration Act) did not amount to sale."

But Public Prosecutor v. Narayan Singh, where Kuppuswami, J. held that where a Sanitary Inspector purchased milk from the accused, tested it and found that it was adulterated, the transaction amounted to a purchase and therefore the accused was liable under rule 29 (c) of Sec. 5 (1) (b) of the Madras Prevention of Adulteration Act.

<sup>1. 1933</sup> Cal. 598: 34 Cr. L. J. 836.

<sup>1953</sup> Cal. 485.

<sup>1938</sup> Mad. 541: 1938 M. W. N. 317: (1938) 1 M. L. J. 669: 47 M. L. W. 317: 39 Cr. L. J. 735: 176 I. C. 212. 1942 Mad. 609: 1942 M. W. N. 439: 55 M. L. W. 464: (1942) 2 M. L. J.

<sup>1944</sup> Mad. 236: (1944) 1 M.L.J. 16:1944

M. W. N. 559: 57 M. L. W. 15: 45 Gr. L. J. 724: 214 I. C. 94; S. also Public Prosecutor v. Ramchandrayya, 1943 Mad. 329: (1948) 1 M. L. J. 117: 49 Gr. L. J. 395; Pabli-Provide v. Pra-Haji Irrahim Helari, 1953 M. L. 241: (1952) 2 M. L. J. 565: 1953 Gr. L. J. 497; Public Prove ator v. K. V. R. Annumber (heating 1953 M. d. 26) Chettiar, 1953 Mad. 262.

The question whether purchase by the Food Inspector for purposes of analysis is sale is concluded by the new sub-section (xiii) of Sec. 2 of the pre-ent Act which says that the sale with its grammatical variation and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of crehange and whether by wholesale or retail, for human consumption or use or for analysis. As there can be no sale without payment of consideration of price, sub-section (3) of Sec. 10 of this Act further provides that where any sample is taken its cest calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.

5. Food Inspectors of public servant. A Food Inspector is a public servant for the purposes of the Penal Code. Chapter IX of that Code deals with offences which are committed by public servants, and are of such a description that they can be committed by public servants alone.

Chapter X of the Penal Code deals with the contempt of the lawful authority of the public servants in its various forms which can only be committed by the public in relation to such public servants. Chapters IX and X of the Indian Penal Code are reproduced for the sake of ready reference:

### CHAPTER IX OF I. P. C.

# Of Offence by or relating to public servant

Section 161. Public servant taking gratification, legal remuneration in respect of an official act. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any efficial act or for showing or forbearing to show in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person with the Central or any State Government or Parliament or any Legislature of any State, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanation.—Expecting to be a public servant. If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

Gratification. The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

Legal remuneration. The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remunerations which he is permitted by the Government, which he serves, to accept.

A motive or recent for doing. A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations—ia 1, a munsif, obtains from  $\tilde{c}$ , a banker a situation in  $\tilde{c}$ 's bank for 1's brother, as reward to 1 for deciding a cause in favour of  $\tilde{c}$ . A has committed the offence defined in this section.

(b) A, holding the office of Consul in a foreign State, accepts a lakh of rupees from the Minister of that State. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to

that State with the Government of India. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that State. A has committed the offence defined in this section.

(c) A, a public servant, induce  $\zeta$  erroneously to believe that A's influence with the Government has obtained a title for  $\zeta$  and thus induces  $\zeta$  to give A money as a reward for this service. A has committed the offence defined in this section.

Section 162. Taking gratification, in order, by corrupt or illegal means, to influence public servant. Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or discover to any person or to render or attempt to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 163. Taking graffication, for exercise of personal influence with fublic servant. Whoever accept so obtains, or agrees to accept or attempts to obtain from any person, for him elf or any other person, any gradification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servent to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disferour to any purson, or to reader or attempt to reader any service or disservice to any person with the Central or any State Government or Parhament or the Legislature of any State, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Section 164. Punishment for abetiment by public servant of offences defined in section 162 or 163. Whoever, being a public servant, an respect of whom either of the offences defined in the last two preceding sections is committed, about the offence shall be punched with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 165. Public servant obtaining educible thing without convolutation, from person concerned in proceeding or business truncally day such public screams. Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate,

from any person whom he knows to have been, or to be, likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, having any connection with the official functions of himself or of any public servant to whom he is sub-admate, or from any person whom he knows to be interested in or related to the person so concerned.

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both:

Section 165.1. Punishment for abetment of off new differed in section 161 or section 165. Whoever abets any offence punishable under section 161 or section 165, whether or not that offence is committed in consequence of the abetment, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 166. Public servant disobeying law, with intent to cause injury to any person. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant intending to cause, knowing it to be likely that he will, by such disobediency cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Section 167. Public servant framing an incorrect document with intent to cause injury. Whoever, being a public servant, and being, as such public servant charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 168. Public servant unlawfully engaging in trade. Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Sction 169. Public servant unlawfully buying or bidding for property. Whoever, being a public servant, and being legally bound as such public servant not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both, and the property, if purchased, shall be confiscated.

Section 170. Personating public servant. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 171. Wearing garb or carrying token used by public servant with fraudulent intent. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

It must not be understood that this chapter is an exhaustive Code for public servants, since the State can make rules for the conduct of its own servants, though it cannot reguate the morality of the public at large beyond that implied in the enactment of this Code. Misconduct and abuse of power by persons other than public servants have to be left to be otherwise dealt with by the penal visitation of a Criminal Code.

Those offences which are common between public servants and other members of the community are left to general provisions of the Code: If a public servant embezzles public money, he is left to the ordinary law of criminal breach of trust. If he falsely pretends to have disbursed money for the public, and by this deception induces the Government to allow it in his accounts, he is left to the ordinary law of cheating. If he produces forged youchers to back his statement, he is left to the ordinary law of forgery. There is no reason to punish these offences more severely when the Govern-

ment suffers by them than when private people suffer, since the security of Government lies in purity of its administration, without which it would lose both revenue and prestige.<sup>1</sup>

### CHAPTER X

### Of contempts of the lawful authority of public servant

Section 172. Absconding to avoid service of summons or other proceeding. Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons or notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 173. Preventing service of summons or other proceedings or preventing publication thereof. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, or intentionally prevents the lawful affixing to any place of any such summons, notice or order, or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation be made;

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupecs, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 174. Non-attendance in obedience to any order from public servant. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same;

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart;

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 175. Omission to produce document to public servant by person legally bound to produce it. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a

<sup>1.</sup> See Court's Penal Law of India, 6th Ed., p. 666.

term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six mouths. or with fine which may extend to one thousand rupees, or with both.

Section 176. Omission to give notice or information to tublic servant by terson legally bound to give it. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the notice or information required to be given is required by an order passed under sub-sec. (1) of Sec. 565 of the Code of Criminal Procedure, 1898, with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 177. Furnishing false information. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 178. Refusing oath or affirmation when duly required by public servant to make it. Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple impliforment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 179. Refusing to answer public servant authorized to question. Whoever being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing to sign statement. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Section 181. False statement on oath or affirmation to public servert or prison uthorized to administer an oath or affirmation. Whoever, being legally bound

by an oath or affirmation to state the truth on any subject to any public servant or other person authorized by law to administer such oath or affirmation, makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believe to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Section 182. False information with intent to cause public servent to use his lawful power to the injury of another person. Whoever gives o any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

- (a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or
- (b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 103. Resistance to the taking of property by the lauful authority of a public servant. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Serial 181. Obstructing the for property offered for sale by authority of public servant. Who, verificationally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred supers, or with both.

Section 185. Illegal purchase or bid for property effect for sate by authority of public servant. Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform that obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which my extend to two hundred rupees, or with both.

Section 185. Obstructing public a reant in discharge of public functions. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Section. 187. Omission to assist public servant when bound by law to give assistance. Whoever, being bound by law to render or furnish a sistance to any public servant in the execution of his public duty, intentionally amilts to give such assistance, shall be punished with simple imposing into a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully

issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Section 188. Disobedience to order duly promulgated by public servant. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 189. Threat of injury to public servant. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 190. Threat of injury to induce person to refrain from applying for protection to public servant. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

This chapter of the Penal Code deals with contempt in its various forms, but its underlying principles are that in order to subject a person to the penal visitation of its provisions, the order must be legal and its disobedience intentional. The two elements are common to all offences described in that chapter. There are others which form the special prerequisites of one or more of them, but these will have to be considered under the sections to which they relate.

Of course the penalties provided in this chapter do not exclude the imposition of other penalties, if the circumstances of the case so warrant. Indeed, the offences here described are really those acts done in contempt of the lawful authority of public servants which, but for the special provisions here made, would not be otherwise punishable. They do not of course affect other coercive powers possessed by public servants to compel obedience to their orders, whether by arrest or proclamation, attachment or sale of property or otherwise. The Chairman of a municipality has no power to authorize the

<sup>1.</sup> See Gour's Penal Law of India, 6th Ed., p. 729.

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Sanitary Inspector to inspect and examine food alleged to be adulterated. Therefore conviction of a person under Sec. 21 read with Sec. 12 (2) of the Bengal Food Adulteration Act, 1919, for offering resistence and obstruction to the Sanitary Inspector authorised in such a manner is bad. It may be that his authorization was defective but in pursuance of the order of the Chairman he assumes and performs exactly the same duties as the would have assumed and performed if properly and validly appointed with the sanction of the Municipal Commissioners he is a public servant within the meaning of S. c. 19, Bengal Food Adulteration Act read with Sec. 21, Explanation 2, Penal Code, and consequently such a person can be convicted under Sec. 186, Penal Code.

6. Form of order not to dispose of stock. Where the Food Inspector decides to keep under sub-section 4 of Sec. 10 of the Act in the safe custody of the vendor any stock of which appears to him to be adulterated or misbranded, he shall after scaling the stock make an order to the vendor to the effect in Form IV and the vendor shall comply with such order.<sup>2</sup>

# FORM IV

(See rule 10)

Where (here give the name of article of food)......intended for food which is in your possession appears to me to be adulterated/misbranded.

Now therefore under sub-section [4] of S.c. 10 of the Prevention of Food Adulteration Act, 1954 [37 of 1954]. I hereby direct you to keep in your safe custody the said scaled stock subject to such orders as may be issued subsequently in relation thereto.

Place......
Date.....

7. Form of receipt for food seized by a Food Inspector. For every article of food seized and carried away by a Food Inspector under subsection (4) of Sec. 10 of the Act a receipt in Form V shall be given by the Food Inspector to the person from whom the article was seized.<sup>3</sup>

# FORM V

(See rule 11)

Details of article of food seized.

Date ... Food Inspector,
Area ... ...

11. (1) When a Food Inspector takes a sample of food for Procedure to be followed by Food Inspectors.

<sup>1.</sup> Satish Chandra Lahiri v. Nahal Chandra Marwari, 1932. Cal. 462: 59 Cal. 234: 36 C. W. N. 134: 33 Cr. L. J. 521: 147 I. C. 812.

<sup>2.</sup> Rule 10, Prevention of Food Adulteration Rules, 1955.

<sup>3.</sup> Rule 11, Prevention of Food Adulteration Rules, 1955.

(a) give notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample;

(b) except in special cases provided by rules under this Act separate the samples then and there into three parts and mark and seal or fasten up each part in such a manner as its nature permit; and

(c) (i) deliver one of the parts to the person from whom the sample has been taken;

(ii) send another part for analysis to the Public Analyst;

- (iii) retain the third part for production in case any legal proceedings are taken or for analysis by the Director of the Central Food Laboratory under sub-section (2) of section 13, as the case may be.
- (2) If the person from whom the sample has been taken declines to accept one of the parts, the Food Inspector shall send intimation to the Public Analyst of such refusal and thereupon the Public Analyst receiving a sample for analysis shall divide it into two parts and shall seal or fasten up one of those parts and shall cause it, either upon receipt of the sample or when he delivers his report, to be delivered to the Food Inspector who shall retain it for production in case legal proceedings are taken.
  - (3) When a sample of any article of food is taken under sub-section (1) or sub-section (2) of Sec. 10, the Food Inspector shall send a sample of it in accordance with the rules prescribed for sampling to the Public Analyst for the local area concerned,

(4) An article of food, seized under sub-section (4) of Sec. 10, shall be produced before a Magistrate as soon possible:

Provided that in the case of any article of which samples have been sent to the Public Analyst for analysis it may be produced on or after the receipt of the report of the Public

Analyst:

Provided further that if an application is made Magistrate in this behalf by the person from whom any article of food has been seized, the Magistrate shall by order in writing direct the Food Inspector to produce such article before him within such time as may be specified in the order.

(5) If it appears to the Magistrate on taking such evidence as he may deem necessary that the article of food produced before him under sub-section (4) is adulterated, he may order it-

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- (a) to be forfeited to the local authority, or
- (b) to be destroyed at the cost of the owner or the person from whom it was seized so as to prevent its being used as human food, or
- (c) to be so disposed of as to prevent its being again exposed for sale or used for food under its deceptive name, or
- (d) to be returned back to the owner for being sold under its appropriate name, after taking adequate guarantee from the owner.
- (6) If it appears to the Magistrate that any such article of food is not adulterated the person from whose possession the article was taken shall be entitled to have it restored to him and it shall be in the discretion of the Magistrate to award such person from such fund as the State Government may direct in this behalf, such compensation not exceeding the actual loss which he has sustained as the Magistrate may think proper.

### SYNOPSIS

1. English law.

2. Scope.

3. How the sample is taken.

- Necessity for notification.
   Time for notification.
- Time for no ification.
   Notification to whom.

7. Method of division.

8. Sealing, fastening and despatch of samples.

9. Necessary precautions in the matter of collection of samples of milk and their transmission to a laboratory.

1. English Law. In every case where it is contemplated that legal proceedings may be necessary, a formal sample must be obtained involving strict compliance with the provisions of section 70 of the English Food and Drugs Act, 1938, which runs as under:

Section 70, Food and Drugs Act. 1938 - Division of, and dealings with samples:

- (1) A person purchasing a sample of any food or drug with the intention of submitting it to be analysed by a public analyst, or taking a sample of food on any premises with the intention of submitting it to be so analysed, shall, after the purchase has been completed or the sample has been taken, forthwith inform the seller or his agent who sold the sample, or, as the case may be, the occupier of the premises or the person for the time being in charge thereof, of his intention to have the sample analysed by the public analyst, and shall then and there divide into three parts, each part to be marked, and sealed or fastened up, in such manner as its nature will permit, and shall,—
  - (a) if required so to do, deliver one part to the seller or his agent, or, as the case may be, to the occupier of the .premises or the person for the time being in charge thereof;
  - (b) retain one part for future comparison, and
  - (c) if he thinks fit to have an analysis made, submit one part to the public analyst:

- Provided that, in relation to samples taken in such circumstances as are mentioned in either of the two next succeeding sub-sections, the foregoing provisions with respect to the giving of information and the manner of dealing with samples shall have effect as modified by these sub-sections.
  - (2) A person taking a sample of any food while it is in transit, or at the place of delivery to the purchaser, consignee or consumer shall, if he intends to submit it to be analysed by a public analyst, deal with it in the manner provided by the preceding sub-section except that he shall retain the first-mentioned part of the sample unless the name and address of the consignor appear on the container containing the article sampled, in which case he shall forward that part of the sample to the consignor by registered post or otherwise, together with a notice informing that person that he intends to have part of the sample analysed by the public analyst.
  - (3) A person purchasing a sample of any food or drug from an automatic machine shall, if he intends to submit it to be analysed by a public analyst, deal with it in manner provided by sub-section (1) of this section, except that he shall send the first-mentioned part of the sample by registered post or otherwise, together with such notice as aforesaid—
    - (a) if the name and address of a person stated to be the proprietor of the machine appear thereon, to that person; and

(b) in any other case, to the occupier of the premises on which the machine stands or to which it is affixed.

- 2. Scope. When a Food Inspector takes a sample of any article of food with the intention of submitting it to analysis, he shall—
  - (1) give there and then notice in writing of his intention to have the analysis made by the Public Analyst, to the person for whom he has taken the sample;

(2) divide the sample forthwith into three parts, mark and seal or fasten

each part:

(3) deliver one part to the person from whom it was taken, another to the Public Analyst and retain the third to himself, for production in Court or for analysis by the Director of Central Food Laboratory.

Sul-section (2) of the present section lays down the procedure to be followed when the person from whom sample is taken refuses to take one part of the sample.

Sub-section (4) lays down the procedure to be followed when an article of food is seized under sub-section (4) of Sec. 10 of the Act.

B fore proceeding to obtain formal samples of food for submission to the Public Analyst, the Food Inspector should be provided with the following equipment:

(1) Sufficiently large bag to carry the following articles;

(2) Adequate supply of bottles, jars, or other suitable containers, of various types and sizes, to contain the samples......in the case of formal sampling it must be remembered that three bottles, etc., are required for each sample;

(3) Corks and stoppers for bottles and containers, etc.;

(4) Sealing-wax, with matches, tapers, candles or other means of melting wax;

(5) Official seal;

(6) Stout envelopes for powders, etc.;

(7) Jug with funnel for filling liquids into bottles;

- (8) Spoon and knife for division of samples into parts; (9) Milk plunger, for mixing contents of milk churns;
- (10) Duster or towel for cleaning jug, etc; (11) Gummed labels for bottles, etc.; and

(12) Note-book for recording particulars of each sample.

A mediatornama is not absolutely necessary to evidence the taking of sample. The section does not make it obligatory on the Executive Omeer to produce that part which he has got with him into Court irrespective of the fact whether it is required or not. When the fact that the sample sent to the analyst was taken from the shop of the accused is not challenged or the Executive Officer is not called upon to produce that part of the sample which was then with him, it is not necessary for him to produce it.1

- 3. How the sample is taken. Lord Hals ury observes as follows in the Law of England (3rd Ed., Volume 17, pp. 471-72).
  - "878. How the sample is taken.—The sample may be demanded from any open receptacle or parcel which contains an article which is exposed or intended for sale, either by wholesale or retail, but the officer is not entitled to require a particular bottle, or cask, or parcel to be opened in order to supply the article he asks for, and where any food, drug or substance is exposed for sale in an unopened container duly labelled, no person may be required to sell it except in such unopened container. It would seem, too, that the officer must unequivocally ask for the article by name, it is not sufficient to require a sample of the contents of a particular receptacle."
- 4. Necessity for notification. The notification required by English Sale of Food and Drugs Act, 1875, Sec. 14. to be given by an inspector after the completion of a purchase of his intention to have the article purchased analysed by Public Analyst in a condition precident to a prosecution under that Act and cannot be dispensed with although there is contemporaneous admission by the seller of an offence against the Act. In England the statutory declaration usually takes the following form:
  - "I am a Sampling Officer of the Oxford City Council and I have purchased this sample of milk for the purpose of submitting it to the Public Analyst for analysis."

This declaration must be made even if the vendor knows that a formal sample has been taken as is the case in many cases. In short there are no exemptions and the statutory declaration must be made in every case, otherwise proceedings in court would fail. An analysis of the article purch sed is also in similar circumstances a condition precedent to a prosecution.2 Apolice constable by the direction of the Inspector of Weights and Measures bought gin from the barmaid of an inn with the intention of submitting it to analysis. He then told her that he was a police constable and that he had purchaed the gin for the purpose of analysis, but did not add "by the Public Analysi." The Inspector afterwards had the gin analysed by the Pullic Analyst and obtained his certificate that it was diluted and the inukeeper was prosecuted under English Act, 1875, Secs. 20 and 21 and summarily convicted of an

<sup>1.</sup> The Public Prosecutor v. Annavarapu Bama-subba Ban, 1950 Mad. 551.

Smart & Son v. Watt, (1895) 1 Q. B. 219: 64 L. J. M. C. 89: 71 L. T. 768: 59

J. P. 54: 43 W. R. 379: 11 T. L. R. 114: 39 Sol. Jo. 133: 18 Cox. C. C. 62: 15 R. 154 D. C.

offence spains 1875 Act, Sec. 6. Held, the notification required by 1875 Act, Sec. 14, was a condition precedent to a prosecution under the Act and so the conviction must be quashed.1

This section follows the principle of English decisions that the Food Inspector taking a sample of food for analysis is bound to notify to the seller his intention to have the article analysed. The safeguards which the Act, lays down should be complied with. However in a Madras case Horwill, J. observed: "If the accused commits an offence by offering adulterated ghee for sale, it does not cease to become an offence because of an omission on the part of the Sanitary Inspector to comply with the requirements of section in giving a notice in writing that he had taken the ghee for the purpose of analysis. The section seems to have been enacted for the projection of the vendor, so that he himself might, if he so wished, have the ghee analysed privately so that he might be satisfied that it was really adulterated in the manner and to the extent indicated by the Public Analyst. Accused per ons no infr quently take advantage of the notice given to them under Sec. 11, and get the ghee analysed privately for the purpose of defending themselves against any charge that the authorities might prefer against them. If notice is not given, an accused person may have cause for complaint that he was not given a proper opportunity of defending himself. That argument would of course be available as much to an employee as to the owner. The section does not suggest that it is in any way connected with the prosecution or the trial so as to make it an indispensible preliminary to either. If an accused contends that he would have had his part of the sample analysed but for the failure to give him notice in writing, the Court would have to consider the reasonableness of that plea."

- 5. Time for notification. Under English Act. 1875, Sec. 14, the purchaser of any article with the intention of submitting it to analysis, shall forthwith give the seller the notification provided by the section.4
- S, the Inspector standing outside, sent B, a constable into M's inn to buy gin and afterwards B came out, both went two minutes later inside, and told M that gin was bought for analysis and divided it. The gin was found thirtyseven degrees underproof. Held, the Justices were wrong in holding that the object of purchase was not notified forthwith pursuant to 1875 Act, Sec. 14.5
- 6. Notification to whom. Where a Food Inspector takes a sample of an article for the purpose of analysis he shall intimate such purpose in writing in the Form VI to the person from whom he takes the sample 6

FORM VI (See rule 12)

To

tion Rules, 1955.

<sup>1.</sup> Barnes v. Chipp, (1878) 3 Ex. D. 176: 47 L. J. M. G. 35: 38 L. T. 570: 26 W. R. 635.

Natural Ram V. Empera, 1934 Cal. 158: 153 I. C. 632.
 In re Bellemkenda Kanakayya, 1942 Mad. 193: 1912 2 M. L. J. 172: 55 M.L. W. 104: 142 M. W. N. 439.

Parsons v. Birmingham Dairy Co., 1882 9 Q. B. D. 172: 51 L. J. M. C. 11: 46 J. P. 727: 30 W. R. 748 D. C. 5. Somerset v. Miller, (1890) 54 J. P. 614

<sup>5.</sup> Rule 12, Prevention of Foo! Adultera-

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									the	same
ana!ysed	by	the I	Public	Anal	yst, f	or	 	 		

### Details of food

	Food Inspector,
Place	Area
Date	

- 7. **Method of division.** After taking of the sample, it must there and then be divided into three parts and the Food Inspector must
  - (1) deliver one part to the person from whom sample has been taken,
  - (2) retain one part for future comparison,
  - (3) if he thinks fit to have the analysis made submit one part to the Public Analyst.

Where an article of food is purchased for the purpose of analy is under the Act, each of the three parts, into which the article is required by the section to be divided, must be sufficient to admit of a proper analysis being made of that part. The three portions should be as nearly equid as possible. It is very important that three parts of the sample should be truly representative of the whole. Where purchase it made of several articles of food at the same time for the purpose of analysis, each article purchased must be divided into three parts, and otherwise dealt with as required by the Act. Where a purchase is made of six bottles of the same article of food, each bottle is for the purpose of the Act a separate article and it is therefore not sufficient compliance with the requirement of the section for the purchaser to divide them into the lots of two bottles each without opening any of the bottles and to hand one lot to the analyst, one to the seller and to retain one hims lf.

Upon the hearing of an information under 1375 Act, Sec. 6, it appeared that the purchaser asked the seller a grocer, if he so'd cream of turtar and the seller produced a box containing penny packets labelled cleam of turtar. The purchaser asked for and was supplied with four packets from the box, all of which were similar in size, outward appearance, and label, and paid four pence for them, he then emptied the contents of four packets into one heap and divided the whole quantity into three parts and scaled then up, handing one part to the seller, another to the Public Analyst and retaining the third to himself. Held, each packet was not a separate article for the purposes of the Act and the mode in which the contents of the packets were dealt with by the purchaser was sufficient compliance with the requirements of the 1875 Act, Sec. 14.3

A consignment of milk sent by respon lent to a purchaser was contained in three churns, containing respectively twelve, fourtren and ten gallon. An Inspector took a sample from each churn, had can heample separately analysed and thereafter laid one information under the English Sale of Food and Drugs Act against respondent in respect of the whole consignment. At

2. Mason v. Cowdry, (1900) 2 Q. B. 419: 69 L. J. Q. B. 667: 28 L. T. 802: 64 J. P. 662: 19 W. R. 28: 16 T. L. R.

434: 44 Sol. Jo. 531: 19 Cox. C. C. 536 D. C.

<sup>1.</sup> Lowery v. Hallard, (1906) 1 K. B. 398: 75 L. J. K. B. 249: 93 L. T. 844: 70 J. P. 57: 54 W. R. 520: 22 T. L. R. 186: 4 L. G. R. 189: 21 Cox. C. C. 75 D. C.

<sup>3.</sup> Smith v. Savage, (1905) 2 K. B. 88; 74 L. J. K. B. 576: 92 L. T. 775: 69 J. P. 245: 3) W. R. 477: 21 T. J. R. 424: 49 Sol. Jo. 430: 3 L. G. R. 582: 20 Cox C. C. 847 D. C.

the hearing of the information the certificates of three analyses were put in and the analyst gave evidence, based upon those analysis, as to the quantitative or true average of the constituents of the whole consignment of thirtysix gallons and he stated that the method which had been adopted of taking the samples was at least as accurate as taking a sample from the contents of the three churs mixed together. The Justices dismissed the information on the ground that the method of taking sample was not proper and legal. Held, the method adopted was proper and legal and the Justices were therefore wrong in dismissing the information.1

8. Sealing, fastening and despatch of samples. Where a simple has been equally divided into three parts each portion must be placed in a suitable container which must be properly sealed and marked.

It is normal practice to use glass bottles or jars for food samples. labelling of the samples is best effected by use of gummed labels.

The purpose of sealing samples of food is to ensure that they are not tampered with before being analysed. Consequently the Food Inspector should adopt a method suitable for e. ch case, which will r sult in effective sealing of the sample in a container which will, so far as practicable, retain the sample in an unaltered condition until any legal proceedings are taken. For this purpose glass containers are much to be preferred. Certain foods particularly milk are liable to decompo e rapidly on keeping and for this reason it is desirable that every Food Inspector should be provided with adequate refrigeration storage to enable him to retain samples in fresh condition until legal proceedings are instituted. In a case<sup>2</sup> where milk is fermented, blowing out the cork with the escape of some of the contents of the bottle, with the result that the Government Chemist could not carry out an analysis, it was held that the Sampling Officer had satisfied the requirements of the Act on sealing and fastening up the sample in the manner as its nature permitted and it was not a condition precedent to conviction that the portion of the sample produced in Court should be capable of analysis. In a case where sardines in olive oil deteriorated after the division of the sample, so that they could not be analysed, it was held that the seller had had a reasonable time to have his portion examined and the conviction was upheld.3 Where butter was wrapped in gaease-proof paper and lost a considerable amount of water, it was held to have been properly fastened.4

The procedure to be followed in sealing, fastening and despatching of semples is laid down in Rules 14 to 22 of the Prevention of Food Adulteration Rules, 1955, which are reproduced below:

- "14. Manner of sending samples for analysis. Samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, entrance of moisture, and shall be carefully scaled.
- 15. Bottles or containers to be labelled and addressed. All bottles or jars or other containing containing samples for analysis shall be properly labelled and the parcels shall be properly addressed. The label on any sample of food sent for analysis shall bear

2. Sickling v. Parker, (1906) 1 K. B. 527: 25 Digest 103, 257.

143.

<sup>1.</sup> Willing v. Isa 2, 1224 1 K. B. 92; B L. J. K. B. 30; 130 L. T. 205; 87 J. P. 197; 40 T L. R. 23; 63 Sol. Jo. 165; 21 L. G. R. 702; 27 Cox C. G. 545 D. G.

<sup>3.</sup> Winterbottom v. Albamed, 1915 2 K. B. 618: 25 Digest 50 and see Chalmers v. M. Mecking, (1921 58 Sc. L. R. 227: 25 Digest 79 S. and 103, 237 i.

4. Pearks Gunston & Tee Ltd v. Houghton, (1902) 1 K. B. 889: 25 Digest 87,

(a) Serial No.

(b) Name of the sender with official designation, if any.

(c) Name of the vendor.

(d) Date and place of collection.

(e) Nature of article submitted for analysis.

- (f) Nature and quantity of preservative, if any, added to the sample.
- 16. Manner of packing and sealing the samples. All samples of food sent for analysis shall be packed, fastened and scaled in the following manner, namely—
  - (a) The stopper shall first be securely fastened so as to prevent leakage of the contents in transit.
  - (b) The bottle, jar or other container shall then be completely wrapped in fairly strong thick paper. The ends of the paper shall be neatly folded in and affixed by means of gum or other adhesive.
  - (c) The paper cover shall be further secured by means of strong twine or thread both above and across the bottle, jar or other container and the twine or thread shall then be fastended on the paper cover by means of sealing wax on which there shall be at least four distinct and clear impressions of the sell of the sender, of which one shall be at the top of the packet, one at the bottom and the other two on the body of the packet. The knots of the twine or thread shall be covered by means of sealing wax bearing the impression of the seal of the sender."
- 17. Containers of samples how to be sent to the Public Analyst. The container of sample for analysis shall be sent to the Public Analyst by registered post or railway parcel or air freight, or by hand in a sealed packet, enclosed together with a memorandum in Form V I in an outer cover addressed to the Public Analyst.

### FORM VII

( See rule 17 )

Memorandum to Public Analyst

From	
	***************************************
	***********************************
	•••••
To	
	The Public Analyst,
	Dated the19

#### MEMORANDUM

The sample described below is sent herewith for analysis under clause (b) of sub-section (1) of Sec. 10 and or clause (c) (ii) of sub-section (1) of Sec. 10 of the Prevention of Food Adulteration Act, 1954:

- (1) Serial No. of the sample.
- (2) Name of the vendor.
- (3) Date and place of collection.
- (4) Nature of article submitted for analysis.
- (5) Nature and quantity of preservative, if any, a ided to the sample.

2. A copy of this memo. and a specimen impression of the seal used to scal the packet of sample is being sent separately by registered post , by hand.1

Food	Inspector,	
Area.		

- 18. Memorandum and impression of seal to be sent separately by post. A copy of the memorandum and a specimen impression of the seal used to seal the packet shall be sent to the Public Analyst separately by post.
- 19. Addition of preservatives to samples. Any person taking a sample of any food for the purpose of analysis under the Act may add a preservative as may be prescribed from time to time to the sample for the purpose of maintaining it in a condition suitable for analysis.
- 20. Preservative in respect of milk cream and gur. The preservative used in the case of samples of any milk (including skimmed and separated milk), cream and gur in liquid or semi-liquid form shall be the liquid commonly known as "formalin", that is to say, a liquid containing about 40 per cent. of familiation of ene drop for one ounce of the sample.
- 21. Nature and quantity of the preservative to be noted on the label Whenever any preservative is added to a sample, the nature and quantity of the preservative added shall be clearly noted on the label to be affixed to the container.
- Quantity of sample to be sent to the Public Analyst. The quantity of sample of food to be sent to the Public Analyst/Director for analysis shall be as specified below:

Article of food				Aproximate quantity to be supplied	
(1) Milk (2) Ghee (3) Butter (4) Khoa (5) Dahi (6) Edible oils (7) Edible fats (8) Tea (9) Atta (10) Wheat floud (11) Gur (12) Cane sugar (13) Honey (14) Prepared fo (15) Aerated wad (16) Vanaspati	  od			Oz. 8 4 4 4 8 8 4 4 8 8 8 8 8 8 16 12 16	

9. Necessary precautions in the matter of collection of samples of milk and their transmission to a laboratory. When milk is kept in its natural condition for a long time its fat and non-fat content would be reduced.

<sup>1.</sup> Strike out whichever is not applicable.

Since milk is so readily liable to change in composition, Harvey and Hill in their book called 'Milk Production and Control' enjoin upon various precautions in the matter of collection of sample and their transmission to laboratory. Thus at page 359 they say:

"It is essential to the proper standard zation of sampling that all samples should be collected in accordance with principles laid down for Designa ed Mills in Memo. 139 Foods January, 1937) issued by the Minister of Health. This sample should be delivered intact to the bacteriologist, . . . When the milk has been obtained, it should be packed in ice in a suitable carrying case, and should be kept un ler these conditions until it arri es at the laboratory. This precaution is particularly essential if the sample have to travel some distance... In any case, if milk cannot be delivered to the laboratory within fifteen minutes of simpling, ice should always be used except in the case of pastcurised or other heat-treated milk."

The authors enjoin that the milk should be collected in sterile glas bottles, which should be fitted with accurately fitting metal or glass stoppers. They also emphasize that the battles after being tilled with liquid from the dipper should be securely stoppered and packed in ize in a suitable box and also say that it is important that each bottle should be filled as full as possible in order to exclude the maximum amount of air.

The learned authors also attach great importance to the fact that milk is tested as soon after the sample is taken as possible. In this connection their suggestions to the local authorities are:

"Whichever method is used, it is advisable that the laboratory should be situated adjacent to the district concerned, in order to prevent any delay in transmitting sample . . . . It would appear highly desirable that every council should provide its own laboratory and not rely on testing being carried out by outside as so often is the

As regards the fit content of milk, the learned authors observed as follows at p. 394:

"It is important to remember the Sale of Milk Regulations, 1939. provides that a sample of milk containing less than 3 per cent. of fat or less than 8.5 per cent. of other solids is to be presumed, for the purposes of the Food and Drugs Act, 1938, not to be g nuine until the contrary is proved. This limit for fat is exceedingly low when modern scientific principles of farming are considered as the average fat content of milk from a mixed herd rarely falls below 3.5 per cent. Milk of individual animals. however, frequently fall to reach the standard fixed, this discrepancy being very noticeable amongst pedigree animals from which it might be expected that milk would be of the highest obtainable standard. Because of these variations and to prevent injustice, povisions has been made for 'appeal to the cow' samples to be taken when necessary. Should such samples fall below the specified standard, an appeal may be allowed."

Thus, the mere fact that fat and non-fat solid in any given sample of milk are below those prescribed does not lead to the inevitable inference of adulteration. Then at p. 405 the learned authors observe as follows:

"Add d water may be suspected under the following circumstances:

(a) Fat percentage below 3 per cent., (b) percentage of non-fatty solids below 8.5 per cent., (c) percentage of total solids below 11.5 per cent., (d) percentage of ash below 0.65 per cent., (e) Freezingpoint nearer to zero than 0.550° C., (f) specific gravity less than 1.027, (g) refractive index less than 37.

It must be reiterated that the above facts only point to suspicion of added water, it being impossible to differentiate between watered milk and milk which is naturally poor in fatty or non-fatty solids by the practical use of the above data."

Although genuine milk usually contains some 87.5 per cent. of water, other samples, though genuine, may contain more or less.

These observations indicate how difficult it is to prove adulteration in a given case.

The learned authors then state:

"Because of changes which occur in lactose, even before souring takes place, the percentage of this substance can only be determined when milk is fresh. For this reason it is desirable that milk should reach the analyst at the earliest possible moment after sampling maintained, if necessary, in a sweet condition by means

This increases the importance of refrigeration of samples and of avoidance of delay in analysing them.1

12. Nothing contained in this Act shall be held to pre-Purchaser may have vent a purchaser of any article of food other than a Food Inspector from having such article analysed by the Public Analyst on payment of such fees as may be prescribed and from receiving from the Public Analyst a report of his analysis:

Provided that such purchaser shall inform the vendor at the time of purchase of his intention to have such article so analysed:

Provided further that the provisions of sub-section (1), sub-section (2) and sub-section (3) of section 11 shall, as far as may be, apply to a purchaser of article of food who intends to have such article so analysed, as they apply to a Food Inspector who takes a sample of food for analysis:

Provided also that if the report of the Public Analyst shows that the article of food is adulterated, the purchaser shall be entitled to get refund of the sees paid by him under this section.

### SYNOPSIS

I. Scope.

1. Scope. The provisions of the Act apply to the purchase of an article of food by a private person as well as by a Food Inspector. A Sanitary Inspector of a Municipality not specially authorised as a Food Inspector can take samples and send them to Public Analyst for examination as a private

<sup>1.</sup> Dattapa v. Mahadappa, 1951 Nag. 191: 1954 Cr. L. J. 471.

individual.¹ The fact that the Statute gives an authoris d person the power of compulsory purchase does not affect the right which such authorised person has in common with every member of the public of proposing to purchase goods, and if the vendor assents of making that purchase.² Whenever the purchaser of any article of food other than a Food Inspector suspents or has reason to believe that the article of food is adulterated he may on payment of the prescribed fees have the article analysed by the Public Analyst.

The person buying the articles is bound by the statute to notify to the seller his intention to have the article analysed. But no particular form of words is required, not even any words at all. What is necessary is that the seller must know that the samples are to be taken for the purpose of analysis, so that he may see the samples are to be fairly taken.<sup>3</sup>

In England the position has all along been muintained that the notification of the intention by the buyer of the article to have the same examined by a Public Analyst is essential for sustaining a procedution. There are many cases on the point, one of the recent ones in which that principle was accepted is the case in Monro v. Central Creamery Co. Ltd. The principle unleaking the said requirement of the statute is to give an opportunity to the seller to see that the sample is fairly taken, to apprise the seller that the sample left with him may have to be preserved by him for future comparison and to give an opportunity of having it analysed at his instance. Section 11 of the Act does not speak of any declaration to be made at the time by the buyer and the principle underlying the said section, is that a declaration is not necessary. All that is required is that the seller must know at the time of the purchase that the article purchased would be sent by the buyer to be analysed by the Public Analyst.

If the report of the Analyst states that the sample was adulterated the purchaser will be entitled to get refund of the fees paid by him for analysis to the Public Analyst.<sup>6</sup> The Public Analyst's certificate shall be admissible in evidence without final proof notwithstanding that the samples were sent by a Sanitary Inspector who was not authorised under the law to take samples in that particular area.<sup>7</sup>

Report of Public form as may be prescribed, a report to the Food Inspector of the result of the analysis of any article of food submitted to him for analysis.

Manindra Nath Banerji v. Jyotish Chandra Dutta, 1937 Cal. 60: 238 Cr. L. J. 745: 169 I.C. 251: (1937)1 Cal. 765; Sewalram Agarwala v. Emperor. 1934 Cal. 858: 153 I. C. 632: 62 Cal. 374.

Kavinandan Sarda v. Emperor, 1935 Pat. 521; 16 P. L. T. 655; 158 I. C. 728.

<sup>3.</sup> Wheeker v. Webb, (1887) 51 J. P. 661: Manindra Nath Banerji v. Joytish Chandra Dutta. 1937 Cal. 60.

<sup>4. (1912) 1</sup> K. B. 578 : 81 L. J. K. B. 547: 106 L. T. 114 : 76 J. P. 131 : 22 Cox. C. C. 682.

<sup>5.</sup> Ibid.

<sup>6.</sup> Parsan v. Birmingham Dairy Co., (1882) 2 Q. B. D. 172: 51 L. J. M. C. 111: 46 J. P. 727: 30 W.R. 743 D. C.

<sup>7.</sup> Sawal Ram Agarwala v. Emperor. 1934 Cal. 858: 153 I. C. 632; 62 I. C. 374.

- (2) After the institution of a prosecution under this Act the accided vendor or the complainant may, on payment of the pre-cribed fee, make an application to the Court for sending the part of the sample mentioned in sub-clause (i. or subclause (iii of clause c) of sub-section (1) of section 11 to the Director of the Central Food Laboratory for a certificate; and on receipt of the application the Court shall first ascertain that the mark and seal or fastening as provided in clause  $b_j$  of sub-section (1) of section 11 are intact and may then despatch the part of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the Court in the prescribed form within one month from the date of receipt of the sample, specifying the result of his analysis.
- (3) The certificate issued by the Director of the Central Food Laboratory under sub-section (2) shall supersede the report given by the Public Analyst under sub-section (1).
- (4) Where a certificate obtained from the Director of the Central Food Laboratory under sub-section (2) is produced in any proceeding under this Act, or under Secs. 272 and 276 of the Indian Penal Code (Act XLV of 1860) it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis.
- (5) Any document purporting to be a report signed by a Public Analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under Secs. 272 to 276 of the Indian Penal Code (Act XLV of 1860):

Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein.

### SYNOPSIS

1. Scope.

2. Milk is to be tested as soon as ofter the sample is taken as

Abnormality of saponification or Reichert Woodlney values does not necessarily mean adulteration.

4. Form and contents of the certi-

5. Weight of sample.

- 6. Constituent parts of sample.
- 7. Effect of clerical error. 8. Receipt of sample.
- 9. Effect of certificate.
- 10. Question of law.11. Scaling, factoring and dispatch of samples.
- Right of accused to cross-exa-mine Public Analyst.
- 13. Forms.
- 1. Scope. This section contains a good safeguard. Before the enactment of the Food Adulteration Act when a Public Analyst furnished his re-

port, that report was final. People of money could go to Public Analyst and get a report made in their own favour, but how to prevent that sub-retion (3) has been added. The very fact that appeal lies to the Director of the Central Food Laboratory will put Public Analyst on their guard that they should not submit false reports.<sup>1</sup>

The report of the Public Analyst is a condition precedent to the prosecution. After a complaint has been filed under this Act the accused vendor or the complainant may after payment of the prescribed fee move the Court of a Magistrate by means of an application for sending third part of the sample mentioned in Sec. 11 (1) ( $\varepsilon$ ) (i) and (iii) to the Director of the Central Food Laboratory for the certificate. On receipt of the application the Court shall first ascertain that the mark and seal or fastening are intact and then under its own seal despatch that part of the sample to the Director of Central Food Laboratory. Within one month from the date of the receipt of the sample the Director of the Central Food Laboratory shall send to the Court in the prescribed form a certific at specifying the result of his analysis. The certificate issued by the Director of Central Food Laboratory shall supersede the report of the Public Analyst and shall be final and conclusive evidence of the facts therein stated. This certificate will be good evidence of facts therein stated in prosecutions either under the Act o under Sees. 2.2 to 276 of the Indian Penul Code (Act XLV of 1860). The report of the Public Acalyst unless superseded may be used as evidence of fact stated therein in prosecutions under the Act as well as prose utions under Secs. 272 to 276 of Indian Penal Code. This shows that offenders can be proceeded again t under the provisions of this Act or under the ordinary law of land.

Sections 272 to 276 of the Indian Penal Cole Art XLV of 1800) are reproduced below:

Section 272. Adulteration of food or drink intended for sale. Whoever adulterates any article of food or drink so as to make such article noxious as food or drink intending to ell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thou and rupces or with both.

Section 273. Sale of noxious food or drink. Whoever sells or offers or exposes for sale as fool or drink any article which has been rendered or has become noxious or is in a state unfit for food and drink, knowing or having reason to believe that the same is noxious as food or drink shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Section 274. Adulteration of drugs. Whoever adulterates any drug or medicinal preparation in such a manner as to lessen the efficiency or change the operation of such drug or medicinal preparation, or to make it noxious, intending that it shall be sold or used for any medical purpose as it it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Section 275. Sale of adulterated drugs. Whoever knowing any drug 'or medicinal preparation to have been adulterated in such a manner at the least its efficacy, to change its operation or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medical purposes as unadulterated or causes it to be used for medical purposes by

<sup>1.</sup> See Parliamentary Debates, Vol. VII, No. 8, dated 1st September, 1954, p. 1073.

any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or

with fine which may extend to one thousand rupees or with both.

Section 276. Sale of drug as a different drug or preparation. Whoever knowingly sells, or offers or exposes for sale or issues from a dispensary for medical purposes, any drug or medicinal preparation, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupces or with both.

2. Milk is to tested as soon as after the sample is taken as possible. When milk is analysed by the Analyst almost a week after the samples were taken, the report of the Public Analyst is of no value in the absence of proof of manner in which the samples sent and the condition in

which the milk was when the samples were received by him.1

3. Abnormality of saponification and Reichert Woollney values does not necessarily mean adulteration. In P. Padmanabha Chetty Perumal & Co.2 the Reichert Woollney and saponification values for the sample of butter taken from the accused are found to be abnormal. Held that the abnormality of Reichert Woollney and saponification numbers does not mean necessarily adulteration. Specially when there is difficulty in fixing a reasonable number to lay down a reasonable standard.

If too low number is fixed, then it tends to give legislative approval to a high degree of adulteration. On the other hand if the number is high a few pure butter and ghee cou'd not be sold. Reichert Woollney number is considerably influenced by the conditions under which the animals live, and in most cases the Reichert Woollney number can be raised to any reasonable standard that may be laid down by the Government by modifying somewhat living conditions of the animals and by not using for the preparation of butter milk secreted towards the end of lactation.

Refractive index is also no guide to the purity of butter for refractive index can easily be manipulated by balancing kinds of fats that are used in

adulteration.

4. Form and contents of the certificate. As pointed our by Lord Halsbury,3 a Public Analyst who has analysed a sample must give to the person by whom it was originally submitted a certificate in the prescribed form specifying the result of the analysis. The certificate must be signed by the Public Analyst, but the analysis may be made by any person acting under his direction.

The analyst should be careful to keep to the prescribed form, and to state the result of his examination. If there is adulteration in any degree he should not indulge in vague generalities nor content himself with merely expressing his opinion. In such a case he should set out his findings with such clearness that the Justices may be able, upon the data he gives, to form their own opinion as to whether the article was or was not adulterated.4

1. Dattappa Mahadappa v. Secretary, Municipal Committee, Buldana, 1951 Nag. 191: 1952 Cr. L. J. 471.

1943 Mad. 47: 55 M. L. W. 775: 1945 M. L. J. 285: 1842 M. W. N. 587.
 Halsbury's Law of England, 3rd Edition Volume V on pp. 469-470.

1. Newby v. Sims, (1894) 1 Q. B. 478, where a certificate, "I find the sample contains an excess of water over and above what is allowed by Act Parliament; I estimate the excess Parliament; I estimate the excess of water at 13 per cent of the entire of sample; I am of opinion that the said sample is not a sample of genuine rum," was held to be bad for vague-

ness. It ought to have stated the total amount of water found in the sample. In Lee v. Bent. Barlow v. Noblett, (1901) I Q. B. 202, D. C., a certificate "I am of opinion that the said sample contained the percentage of foreign ingredients as under: 5 per cent of added water to the prejudice of the purchaser" was held to be bad. "The certificate must state such facts would enable the Justices themselves to come to a conclusion whether the article of food in question had or had not been adulterated" (per Hawkins, J. at p. 205.

In Bridge v. Howard,<sup>1</sup> the certificate stated "I am of opinion that the sample contains the parts as under: milk 94 per cent; added water 6 per cent. This opinion is based on the fact that the sample contained 7.97 solids non-fat, whereas genuine milk contains not less that 8.5 volids non-fat." This certificate was held to be good, because the analyst not only stated the percentage of added water, but also gave the scientific basis on which his conclusion rested.<sup>2</sup> Where the case is not one of adulteration the analyst need not set out the constituent parts of the sample. It is sufficient to set out the "result" of the analysis.<sup>3</sup>

The analyst may make observations in cases of addition, abstraction or deficiency of any kind but he is not limited to this and may offer such observations as he wishes. If there is no legal standard for the article analysed he must show in the certificate what standard he has adopted, and where the certificate is to be put in as evidence he should state enough to enable, not only the Court, but also the defendant, to see exactly what is the offence charged.<sup>4</sup>

The certificate of the analyst must be a document in proper form and ought to contain in it sufficient material to enable the Magistrates to form a judgment on those materials whether the offence charged had been committed. Where the Public Analyst reports on the case by a letter in the official form, the letter is not admissible in evidence without proof of truth of its contents.

The certificate of the Chemical Analyst should contain the factual data which the analysis should reveal and not merely the opinion of the Public Analyst as to what that indicates about the nature of the acticle of food, and that if the certificate merely gives the final opinion of the Public Analyst and if such an opinion be held to be conclusive evidence about the nature of the article of food, the merit of the case against the accused is really decided by the Public Analyst and not by the Court and the Court just gives its authority to the conclusion of the Public Analyst and this cannot be the position in law.?

The opinion of an expert by itself may be relevant but would carry little weight with a Court unless it is supported by a clear statement of what he noticed and on what he based his equition. The expert should, if he expects his opinion to be accepted put before the Court all the materials which induced him to come to his conclusion, so that the Court, although not an expert, may form its own judgment on those materials. The more

- 1. (1897) 1 Q. B. 80.
  2. See also Lee v. Bent, Barlow v. Noblett, (1901) 2 K. B. 290, at p. 295, for Lord Alverstone, C. J., Findley v. Hats, (1905) 67 J. P. 193 (where a certificate that brandy had been "reduced from 25 per cent under-proof" was held to be good; Hull v. Honsnell, (1904) 63 J. P. 591: at p. 592, for Lord Alverstone, C. J., Bayley v. Cook, (1905) 69 J. P. 139; Gordon v. Love, (1911) S. C. (J.) 75: and also Jenkins v. Naden, (1919) 88 L. J. K. B. 1137 (in which a certificate stating the percentage of fat in a sample of milk, but not setting out other constituents, was held to be good.
- 3. Bakewell v. Davis, (1894) 1 Q. B. 296.
- 4. Gammack v. Jackson Wyness Ltd., (1948)

- 2 All. E. R. 1056, per Curiam, at p. 1057.
- 5. Guiller v. Rock; Bent v. Oreneval; L. e. v. Bent; Barbae or Palmer v. N. blet, (1901) 2 K. B. 290; 50 I. J. K. B. 747; 34 L. F. 719; 65 J. P. 646; 49 W. R. 631, 701; 17 L. I. R. 503; 45 Sol. Jo. 504, 505; 19 Cox C. C. 725 D. C.; R. Janubl M. S. v. Karse og Mani de lity, 1923 C.d. 361; The Public Analyst should submit his report in the prescribed form.
- 6. Rechards Modes and Marine IIIs 1923 Cal. 561: 25 Gr. L. J. 170: 76 I. C. 394.
- 7. State v. Stanti Ram, 1953 All. 34; State v. Nathi Lal, 1956 A. L. J. 340; Din Dayal v. Siate, 1956 All. 420; 1956 A. L. J. 376: 1956 A. W. R. H. C, 207; 1957 Cr. L. J. 1031.
- 8. Sec. 51, Evidence Act.

mention that a certain kind of test known as Binet and Simon tests were applied and certain results were obtained, might be relevant as a pilce of evidence but would not be conclusive.1

Where the report of the Public Analyst does not give any data of the quantitative analysis, the report cannot be adequately tested and must be rejected.

The ipse divit of the Public Analyst that a certain sample of ghee is "adulterated" or "grossly adulterated" and does not conform to the standard, ought not to be accepted by a Court unless and until the Public Analyst gives the data from which it can be ascertained in what respects the sample is different from the standard. No person ought to be put in peril of a punishment on such a written report which fails to furnish the data and which is not given on oath and untested by cross-examination.

The weight to be attached to the report of the Chemical Examiner used in evidence under Sec. 510, Criminal Procedure Code came to be considered by a Division Bench of the Allahabad High Court in Happu v. Emperor.<sup>2</sup> In that case the question was whether a lethal dose of arsonic that is two grains or more had been administered. The report of the Chemical Examiner on which the trial court placed reliance was simply this, namely, that arsenic was "detected" in the viscera of the deceased. That was not enough to prove death by arsenic poisoning.

When the appeal was brought to the High Court a quantitative analysis report by the Chemical Examiner was produced at the Court's request. The Chemical Examiner reported that he had found 0.182 of a grain of arsenic in those portions of the viscera that was submitted to him.

In considering the question as to what weight was to be attached to the written report of the Chemical Examiner used in evidence under Sec. 510, Criminal Procedure Code which was not made on oath and not tested by cross-examination, it was held that having regard to the circumstances of that case no weight were to be attached to it, and since Sec. 510 used the word "may" and not "shall" the Court has a discretion in the matter, and for the ends of justice whenever the Court thinks necessary to call the Chemical Examiner in evidence, it should exercise the right so that he may be examined on oath and be subjected to cross-examination.

The same may be said mutatis mutandis to the report of the Public Analyst.3 Beer with which a certain quantity of arsenic injurious to health had been mixed in the process of manufacture, accidentally and in ignorance, was sold by a retailer without knowledge or reasonable ground for suspicion of the presence of the arsenic in the beer. Held, there was evidence that the beer was not of the nature, substance and quality of the article demanded by the purchaser and the retailer could be convicted under 1875 English Act, Sec. 6. Certificate of Public Analyst stating in one case that the sample of beer 'contains arsenic' and in the other case that it contains a certain quantity of arsenic. Held, insufficient.1

5. Weight of sample. The insertion in the certificate given by a Public Analyst under 1875 English Act of the weight of sample analysed is obligatory only when the weight of the sample is material to the accuracy of the analysis and its omission does not necessarily invalidate the certificate

<sup>1.</sup> Mst. Titli v. Alfred Robert Jones, 193 Ml. 273; 3 A. W. R. 70: 153 I. C 7.3: 1931 A. L. J. 1129; 56 All. 428. 2. 1933 All. 837: 1934 A. L. J. 173: 3 1934

Cr. L, J. 280.

<sup>3.</sup> Din Doyal v. State, 1956 All 520: 1956 A. L. J. 276: 1956 A. W. R. (H.C.) 207: 1956 Cr. L. J. 1031.

where the accuracy of the analysis does not in any way depend upon the weight of the sample.\(^1\) When the space for the weight is left blank it is not necessary that the certificate shoul | contain a statement that the article could not conveniently be weighed.\(^2\)

6. Constituent parts of sample. The certificate given by a Public Analyst of the result of an analysis under 1875 English Act need not set out the parts contained in the sample when the case is not one of adulteration; it need only state the result of analysis. The 'observations' which in the form of certificate given in the schedule to that Act follow after the result of the analysis are only to be made in the case of adulteration. But the addition in cases where adulteration is not charged of 'observations' amounting only to an expression of opinion on the part of the Analyst and not to finding of fact, though unauthorised and improper, will not necessarily vitiate the certificate.

Under the heading 'observations' comes a statement that the abstraction of fat is fraud and may be injurious to health. 'Observations' are to be made where the case is one of adulteration and they are not to be made in such a case where adulteration is not suggested.<sup>3</sup>

In a presentation of adulteration of fool whether food is adulterated or not is a question for the Court to decide and not for the Public Analyst. The form prescribed by the Act contemplates only the opinion of the Public Analyst whether the article of food contains excess or deficiency in constituents.<sup>4</sup>

A Public Analyst gave a certificate that a sample of rum contained an excess of water over and above what is allowed by "Act of Parliament," which he estimated at 13 per cent. *Held*, this certificate did not afford evidence which would warrant a conviction. It should have specified the total quantities of pure spirit and of added water contained in the sample. It was not for the Analyst but for the Justices to determine conclusions of law and of fact.<sup>5</sup>

In a prosecution under 1875 English Act for selling adulterated milk to a purchaser, the only evidence of adulteration was the certificate of Public Analyst, which stated that the sample submitted to him "contained the percentage of foreign ingredients as under 5 per cent of added water." Held, the certificate was bad evidence under the Act of Adulteration because it did not state the constituents parts of the sample analysed.

Respondent was summoned for selling milk not of the nature, substance and quality demanded by the purchaser, it being deficient in milk fat to the extent of 53 per cent. The certificate of the Analyst stated: "I am of the opinion that the sample contained the parts as under and the percentages of foreign ingredients as under: "Milk fat 1.4 per cent; milk solies other than milk fats 5.6; specific gravity at 60° F. 1020.6.

Observations. "This milk is deficient in milk solids other than milk fat to the extent of 2.9 per cent which is equivalent to the addition of 34.2 per cent of water. It is also deficient in milk to the extent of 53.4 per cent of the milk fat." Held, the certificate was sufficient though it did not in

Sneath v. Taylor, (1901) 2 K. B. 376:
 To L. J. K. B. 872: 65 J. P. 548: 49
 W. R. 719 D. C.

<sup>2.</sup> Hunter v. Winterap, (1904) 4 Adam

<sup>3.</sup> Bakewell v. Davis, (1894) 1 Q. B. 296: 63 L. J. M. C. 93: 69 L. T. 832: 58 J. P. 228: 10 T. L. R. 40: 10 R. 617 (D. C.).

<sup>4.</sup> Gandaram v. Emperor, 1942 Pesh. 47(2):

<sup>200</sup> I.C. 880: 43 Cr. L. J. 728.

<sup>5.</sup> Newby v. Sims, (1894) 1 Q. B. 478: 63 L. J. M. C. 228: 70 L. T. 105: 58 J. P. 263: 10 T. L. R. 206: 38 Sol. Jo. 202: 10 R. 596 D. C.

<sup>6.</sup> Fortune v. Hanson, (18 6) 1 Q. B. 202: 65 L. J. M. G. 71: 71 J. T. 115: 60 J. P. 88: 11 W. R. 41: 12 T. L. R. 164: 40 Sol. Jo. 240: 18 Cox C. C. 258 D. C.

terms refer to the standard laid down by the English Sale of Milk Regulation,

1901, rule 1.1

Brandy having been analysed the certificate stated: "I am of the opinion that the sample contained parts as under, or the percentages of foreign ingredients as under; it has been reduced from 25 degrees underproof to 27.6 degrees underproof." Held, the certificate was sufficient.<sup>2</sup>

In a prosecution under 1875 English Act, for selling adulterated milk, the certificate of the Public Analyst stated that the sample submitted to Lim contained 6 per cent of added water and went on to say, "this opinion is based on the fact that the sample contained 7.97 per cent solids non-fat whereas genuine milk contains not less than 8.5 per cent solids non-fat." Held the certificate was good, although it did not state the constituent parts of the sample analysed.3

On a presecution for having unlawfully sold to the prejudice of the purchaser milk which was "not of the nature, substance and quality of the article demanded" the certificate given by a Public Analyst of the result of an analysis made by him under 1875 English Act, is admissible in evidence if it sets out the matter complained of, namely the deficiency in fat. It need not set out the constituent parts of the sample analysed. Where, therefore, the Analyst's certificate so far as material was as follows:

"I am of the opinion that the sample contained the parts as under, namely, 2.5 per cent fat, compared with the limit of the Board of Agriculture it was deficient in fat to the extent of 16.67 per cent."

Held, that the certificate was admissible in evidence.4

- 7. Effect of clerical error. The certificate of the Analyst correctly stated the parts of the percentages of foreign ingredients in the same but the Analyst in giving the reasons for his opinion why the sample was adulterated, by an error in copying stated it contained only 25 parts of A. C. per 10,000 parts of P. S. instead of 32.7 parts. The Analyst was called to correct this error which could be corrected by the figures given in the certificate itself. Held, the certificate was good.5
- 8. Receipt of sample. It is of great importance that the Analyst's certificate should state from whom he actually and physically received the sample which he analysed.6
- Effect of certificate. The certificate of the Analyst is made evident without formal proof, but there is no presumption that it is accurate. When the analysts have found that the saponification value was excessive the presumption should be drawn that the mustard oil was not genuine. But this presumption is rebutted if the accused calls evidence which satisfies the Court that the oil in question was derived exclusively from mustard seeds.7

R sold milk to  $\hat{H}$  which was stated to be purchased for an analysis and the milk was duly divided into three parts as required by the 1875 English

1. Bayley v. Cook, (1905) 92 L.T. 170: 69 J. P. 139: 53 W. R. 410: 21 T.L.R. 235: 3 L. G. R. 304: 20 Cox C. C.

233: 3 L. G. R. 301: 25 779 D. G. 2. Friedley v. Haas, 1903) 88 L. T. 465: 67 J. P. 108: 19 T. L. R. 353: 47 Sol. Jo. 106: 1 L. G. R. 877: 20 Cox G. C. 399 D. C.

3. Bridge v. Howard, (1897) 1 Q. B. 80 : 65 I. J. M. C. 229 : 75 L. T. 300 : 60 J. P. 790 : 45 W. R. 78 : 13 T. L. R. :41 Sol. Jo. 29:18 Cox C. C. 421

4. Jenkins v. Naden, (1919) 88 L. J. K. B.

1137:12 L. T. 142:83 J. P. 154:35 T. L. R. 368:17 L. G. R. 324:26 Cox C. C. 410.

Lowery v. Hallard, (1906) 1 K. B. 398;75 L. J. K. B. 249:39 L. T. T. 844:70 J. P. 57:54 W. R. 520:22 T. L. R. 186:4 L. G. R. 189:21 Cox. C. C. 75 D. C.

Harris v. Williams. (1869) 6 T. L. P. 47

6. Harris v. Williams, (1869) 6 T. L. R. 47

7. Superintendent & Remembrancer of Legal Affair Bengal v. Kshitish Chandra Banverji, 1930 Cal. 667.

Act and on analysis the certificate of the Analyst after stating the constituents, said the milk was adulterated with 20 per cent of water. R being charged with selling adulterated milk the Analyst's certificate was given in evidence and H gave no evidence to contradict it, but the M. gistrate thinking that the state of the milk might be explained by its standing several hours in a large can and the best milk at the top ladled out before the purchase, dismissed the summons. Held, the Magistrate was wrong as there was no evidence to contradict the certificate of the Analyst he ought to have acted on it and convicted R.1

Respondent was charged under 1875 English Act, Sec. 6, with unlawfully selling to the prejudice of the purchaser new milk adulterated with 14.4 per cent water. The Analyst's certificate was put in and stated that the milk contained non-fatty solids 7.28 per cent, fat 2.50 per cent.

Observations. "When judged by Sale of Milk Regulations, 1901, the sample shows a deficiency of non-fatty solids corresponding to an addition of 14:4 per cent of water." No evidence was called for respondent. The Justices found as a fact that adulteration of this milk by addition of 114 per cent of water had not been established and they dismissed the charge. He'd, the Justices were wrong as the certificate of the Analyst was evidence of the offence charged until displaced by evidence to the contrary.<sup>2</sup>

The accused was convicted of an offence for having sold milk below the standard of purity prescribed by the Government. The charge that was framed against the accused did not state whether it was buffalo's milk or cow's milk that was said to have been sold by him contrary to law. The certificate of analysis by the Government Analyst was based on the assumption that the milk that was sent as sample, that is milk that was sold by the accused was sold as buffalo's milk. There was no basis for this assumption that it was buffalo's milk that was sold. The sample contained 3.4 per cent milk fat. There was nothing to show that the quantity of solid found in the sample was below the prescribed minimum. It was held that the sample in respect of which the offence was committed was to be dealt with as if it were cow's milk that was offered for sale or sold and that it could not be said that the sample was below the minimum prescribed so far as milk fat was concerned.3

- 10. Question of law. Where the glue is deemed to be adulterated or not is not a matter on which the Chemical Examiner should be required to express an opinion. It is a question of law. What he has to do is to state the result of his analysis and leave the Court to determine whether on these results the offence charged is proved or not.4
- Sealing, fastening and despatch of samples. See Notes under the same heading under Sec. 11.
- Right of accused to cross-examine Public Analyst. It would not be in consonance with the well established principles of administration of justice to deny the right to an accused person to test the opinion of an expert on the basis of which he is sought to be condemned. Where such opportunity was not afforded to the accused person, the opinion of the Public Analyst can carry little weight and so cannot be regarded as an adequate basis for conviction of the accused person.5

Harrison v. Richards, (1881) 45 J. P. 552.
 Elder v. Dryden, (1908) 99 I., T. 20 : 72 J. P. 355 : 6 L. G. R. 786 D. C.

<sup>3.</sup> In re Krishna Iyer, 1939 Mad. 384 : 49 M. L. W. 205 : 1939 M. W. N. 244 (1943) 1 M. L. J. 266:185 I. C.: 41

Cr. L. J. 106.

<sup>4.</sup> Narinjan Da s v. Emperor, 1930 Rang. 51: 126 I. C. 535 : 31 Cr. L. J. 1065.

Dattappa Mahadapa v. S. retur, Muri pol Committee, Buldana, 1951 Nag. 191: 1952 Cr. L. J. 471.

From

By Sec. 14 the Bombay Act has conferred upon the certificate of a Public Analyst a special privilege. It is provided that the production of such a certificate shall, until the contrary is proved, Le sufficient evidence of the facts therein stated. This provision confers a privileged position on these certificates, but that privilege must not be so far extended as to deprive the accused person of the ordinary right to which every person accused of any offence is always entitled. He has a right to cross-examine any witness whom the prosecution has produced against him. This right is not to be taken away because for special reasons a Public Analyst has been allowed to give his evidence in writing and not by word of mouth. Thus the Act itself expressly provides. It confers upon the accused person the right to require the Court to summon the Public Analyst as a witness and it lays upon the Court the duty of summoning that witness accordingly.1

### 13. Forms.

has been deposited in Court.

### FORM I

[See rule 4 (1)]

Memorandum to the Director, Gentral Food Laboratory

To The Director, Central Food Laboratory. No.--Dated the-MEMORANDUM I send herewith, under the provisions of Sec. 13(2) of the Prevention of Food Adulteration Act, 1954, sample (s) of a food purporting to be--for test or analysis and request that a report on the result of the test or analysis may be supplied to this Gourt: 1. Distinguishing No., on the container and outer covering-Particulars of offence alleged ---3. Matter on which opinion required — A fee of Rs.

Magistrate.

### FORM III

[See rule 7(3)] Report by the Public Analyst

Report No.--I hereby certify that I----Public Analyst for-----duly appointed under the provisions of the Prevention of Food Adulteration Act, 1954, received on the -----day of ------19----from --found the seal intact and unbroken.

<sup>1.</sup> Haji Gokal Jetha v. Emperor. 1935 Sind 5: 36 Cr. L. J. 571: 14 I. C. 514.

re the result of anal	lysis to be as follows:	e aforementioned sample
and am of the opini	on that————	
Signed this———	day of	19 .
		(Signature)
		Public Analyst.
Address————		

- 14. (1) The Central Government may, by notification in the official Gazette, appoint any person to exercise the powers of a Food Inspector under yay and other premises.
  - (a) at any major port, air port or land customs station in respect of any article of food which is being imported through such port or station;
  - (b) in respect of any railway station or group of railway stations where food is being sold.

Provided that the Central Government may, instead of making any appointment under this section, authorize any Food Inspector in any State in which the major port, air port or land customs station or railway station is situate to exercise such powers.

(2) Every person apointed or authorized under sub-sec. (1) shall be deemed to be a Food Inspector for the purposes of this Act.

#### SYNOPSIS

1. Scope.

- 2. Authorisation under Madras Act 3 of 1939—Validity.
- 1. Scope. This section empowers the Central Government to appoint any person to exercise the powers of a Food Inspector at major ports, air ports or land custom stations or railway stations.

The sale of food in railway premises has been brought within the purview of this Act by this section.

A person who is appointed to exercise the powers of a Food Inspector will be known as Food Inspector.

2. Authorisation under Madras Act, 3 of 1939—Validity. Under Sec. 16 of the Madras Public Health Act, 3 of 1939, the Health Officer can

exercise the functions only under any of the Acts mentioned therein. As the Central Prevention of Food Adulteration Act, 37 of 1954, is not one of the Acts mentioned therein, the authorisation under Sec. 16 of the Madras Public Health would not avail for the purpose of prosection for an offence under the Food Adulteration Act, Central Act 37 of 1954, launched by the Health Officer of Municipality.<sup>1</sup>

Notification of food poisoning.

Notification of food poisoning coming within their cognizance to such officer as may be specified in the notification.

# SYNOPSIS

1. English Law.

3. Bacteria found in milk.

2. Scope.

- 1. English Law. Section 17 of the English Food and Drugs Act, 1938, which requires every medical practitioner to notify the Medical Officer of Health every case of food poisoning runs as under:
  - "Section 17. Food and Drugs Act, 1938: Notification of cases of food poisoning.

    (1) If a registerd medical practitioner becomes aware, or suspects, that a patient whom he is attending within the district of any local authority is suffering from food poisoning, he shall forthwith send to the Medical Officer of Health of that district a certificate stating—
    - (a) the name, age and sex of the patient, and the address of the premises where the patient is; and
    - (b) particulars of the food poisoning from which he is, or is suspected to be suffering;
    - and also stating whether the case occurs in the private practice of the practitioner, or in his practice as medical officer of a public body or institution.
  - (2) A local authority shall pay to a registered medical practitioner for each certificate duly sent by him under the preceding subsection to their medical officer of health a fee of two shillings and six pence if the case occurs in his private practice, and a fee of one shilling if it occurs in his practice as medical officer of any public body or institution.
  - (3) Where the medical practitioner attending a patient is himself the medical officer of health of the district, he shall be entitled to the fee to which if he were not the medical officer of health, he would have been entitled in respect of a certificate sent by him to the medical officer.
  - (4) Notwithstanding any enactment which in London might entail such a disqualification, the acceptance by a medical practitioner of a fee under this section shall not subject him to [disqualification for being a member of any authority or holding any other public office.

<sup>1.</sup> Public Prosecutor v. Pannapan, 1957 Mad. 741.

Scope. This section provides that the State Government may require medical practitioners of a local area to report all cases of fool poisoning coming to their notice. However no penalty has been prescribed for the contravention of the statutory duty imposed by this section. A medical practitioner who omits to report occurrences of food poisoning can be presecuted under the ordinary law under Sec. 176 of the Indian Penal Code which is reproduced below:

"170. Omission to give notice or information to public scream by person legally bound to give it. Whoever legally bound to give any notice or furnish information on any subject to any public servant, as such intentionally omits to give such notice or to furnish such information in the manner and at the time required by law shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees or with both;

or if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence or in order to the apprehension of an offender, with simple imprisonment, for a term which may extend to six months or with fine which may extend to one thousand rupees or with both;

or if the notice or information required to be given is required by an order passed under sub-section (1) of Sec. 565 of the Code of Criminal Procedure, 1898, with imprisonment which may extend to six months, or with fine, which may extend to one thousand rupees or with both."

No prosecution can be initiated under Sec. 176 of the Indian Penal Code without complaint of the public servant concerned. The offence is non-cognizable and summons should ordinarily issue in the first instance. It is bailable and not compoundable. It is triable by a Magistrate, Presidency, first or second class and may be tried summarily.

The term "food poisoning" is not defined. It is generally considered to include all types of illness due to the consumption of food or drink which has been contaminated in one way or another. In its widest sense, food poisoning include—

(a) products which are in themselves toxic, e.g., poisonous fungi;

(b) products contaminated chemically, e.g., presence of poisonous metals, such as lead, tin, antimony, etc.;

(c) products infected by parasites; and

(d) bacterial food poisoning.2

Although cases of food poisoning are now notifiable, in acco: dance with the provisions of Sec. 15 of the Act of 1938, the term "food poisoning" has not been defined in the statute. Notwithstanding that the expression includes types of poisoning due to causes other than of a bacterial origin, food poisoning is generally due to bacterial contamination of food.

3. Bacteria found in milk. Lactic organisms are present in milk in varying numbers even when produced under clean conditions. The composition of milk with the bacterial content undergoes a rapid change unless the milk is pasteurised or unless it is sent under refrigeration. The following passage from the book called 'Milk Production and Control by Harvey and Hill (p. 11)' will prove illustrative and thought provoking. They say:

> "Despite their minute size, bacteria can accomplish a great deal in various directions. It has been proved that lactic acid organisms,

Sec. 195, Cr. P. C.
 See "Synopsis of "Hygiene", Jameson and

Parkins, 8th Ed., 1944, London J. & A. Churchill, p. 386 et seq.

which are present in milk in varying numbers even when produced under clean conditions, can consume their own weight of food each hour. They absorb food over their entire surface and emit waste products, generally acids, into the milk."

Then at p. 13 it is stated:

"The acid producing organisms cause an alteration in the character of the milk which ends in putrefaction. The factors which decide the rate of this change are (a) the quantity originally present in the milk, (b) the temperature at which the milk is kept. If milk with a high bacterial content is kept above a temperature of 60° F., conditions are favourable for early and rapid souring."

Then at p. 16 it is stated:

"In some milks acid develops to a considerable extent, while in others fermentations take place. 70° F. sees the rapid development of the lactic acid organisms, principally the Streptococus lactis."

Then at pp. 177-78 they state:

"The keeping properties of milk depend upon the number of bacteria contained. Bacteria multiply more rapidly at high temperature than at low, and the higher the temperature the more rapidly do they increase, this being specially the case with those organisms which cause rapid souring and objectionable flavours in milk. The bacteria most commonly found in milk grow more rapidly at temperatures above 60° F. At temperatures above 70° F. milk speedily sours. If the liquid contains as few as 10,000 bacteria and is held at 60°F., it will become sour in fiftythree hours. If the same milk is held at 50°F. it will not sour for eighty-six hours. Every effort should, therefore, be made to ensure that the milk is cooled to a temperature as low as is possible under the prevailing circumstances."

Where milk is kept in its natural condition for a long time, it may be taken, therefore, that its fat and non-fat content would be reduced.1

# **16**. (1) If any person—

Penalties. (a) whether by himself or by any person on his behalf imports into India or manu- factures for sale, or stores, sells or distributes, any article of food in contravention of any of the provisions of this Act or of any rule made thereunder,

(b) prevents a Food Inspector from taking a sample as

authorised by this Act, or

(c) prevents a Food Inspector from exercising any other power conferred on him by or under Act,

(d) being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him, any material which may be employed for the purpose of adulteration, or

<sup>1.</sup> D. Lyan Marulattipha v Secretary, Municipal Committee, Buldana, 1951 Nag. 191.

- (e) being a person in whose safe custody any article of food has been kept under sub-sec. [4] of Sec. 10, tampers or in any other manner interferes with such article, or
- (f) uses any report or certificate of a test or analysis made by the Director of the Central Food Laboratory, or by a Public Analyst or any extract there-of for the purpose of advertising any article of food, or
- (g) whether by himself or by any person on his behalf gives to the purchaser a false warranty in writing in respect of any article of food sold by him, he shall, in addition to the penalty to which he may be liable under the provisions of Sec. 6, be punishable—
  - (i) for the first offence, with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both;

(ii) for a second offence with imprisonment for a term which may extend to two years and with fine:

- Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than two thousand rupees,
- (iii) for a third and subsequent offences, with imprisonment for a term which may extend to four years and with fine:
  - Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than two years and such fine shall not be less than three thousand rupees.
- (2) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the Court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the Court may direct. The expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.

### SYNOPSIS

1. Scope.

Punishment for abetment.

Punishment for attempt.

Burden of proof.

'Mens rea' not essential element. 5.

Obstruction of Food Inspectors. 6.

7. Appeal.

1. Scope. Clauses (a) to (g) of sub-sec. (1) enumerate various offences under the Act. These offences may be classified into following categories:

(i) Offences in relation to adulteration of articles of food.

(ii) Offences in relation to obstruction of officers in discharge of duties.

(iii) Offences in relation to exploitation of certificates of Public Analyst and Director of Food Laboratory.

(iv) Offences in relation to false warranties.

The Prevention of Food Adulteration Act makes it penal to sell adulterated articles. It does not excuse the offence on the ground that the purcha-er knew that what he was purchasing was not pure foodstuff. The Act is intended to protect the public from using adulterated articles and therefore it has made it penal to sell these adulterated articles to persons irrespactive of the fact that the purchaser knew the article to be adulterated or otherwise.

It is no defence to say that the articles can be adulterated and sold in the market with the publication of the fact that they are adulterated.1 The knowledge and awareness of purchaser are wholly immaterial as the object and policy of the statute is to protect the public by prohibiting the sale in any circumstances of adulterated milk or milk which did not come up to the prescribed standard of purity.2 The Magistrate is not justified in introducing as a test of liability the purpose for which adulteration was affected and further of importing into it the element of an intention to commit fraud. The material provisions do not postulate that for establishing the offence of adulteration it is either necessary to prove that the intention was to increase the bulk or measure or to debase the quality or that the intention was of a fradulent nature.3 The ignorance of the accused of the nature substance or quality of the article sold by him is no defence.4 Accused cannot be acquitted on the ground that he was not responsible for the adulteration and that he sold the article in the same condition as that in which he received it.5

In case of storing there is no question of actual sale. The gist of the offence is storing itself.6 The petitioner took delivery of some tins of mustard oil at the Polpur railway station. On the same day while the goods had not actually left the railway premises a sample was taken from these tins by the Sanitary Inspector and it was found that the mustard oil contained therein was adulterated. The petitioner and certain other persons were prosecuted and the petitioner was convicted. It was held that the petitioner came into

 Rakhal Chandna Dutta v. Purana Chandra Ghosh, 1930 Cal. 273; 31 Cr. L. J. 1151; 34 C. W. N. 281; 127 I. C. 57; 57 Cal. 1123; 51 C. L. J. 277.
 11.e Pull Property v. Modi Kenhanya, 1947 M.d. 184 (246) 2 M. L. J. 311; 1946 M. W. N. 669; 54 M. L. W. 608; 1947 A. W. R. (Supp.) 3; 48
 Ch. J. 1676; (1947) Mad. 732. Cr. L. J. 676 : (1917) Mad. 732.

3 Ibid. 4. Public Prosecutor v. Narayanna Ayyar, 1940 Mad. 173: 41 Cr. L. J. 377: (1939) 2 M L. J. 916 : 1939 M. W. N. 1128 : 50 M. L. W. 790 : 186

5. Public Prosecutor v. Venkidari 1:03 Public Prosecular V. Ventura: N. 20.

Publiah Chetti, 1946 Mad. 414: (1946)

1 M. L. J. 461: 1946 M. W. N.

352: 54 M. L. W. 322: 47 Cr. L.

J. 869: 226 I. C. 265.

Dr. Melland, Blacan: V. R. o. Bakkat

Sharma, 1953 Cal. 485: 1953 Cr. L: J.

physical possession of the consignment as soon as the took delivery the enforce the railway station and from the moment that he took such delive y until the goods were actually exposed for sale in his shop there could be no doubt that he was actually storing them with a view to their ultimate discord by sale. The fact that he could have had no opportunity to examine the nature of the goods between the time when he took delivery of the n and the time when a sample was taken was no defence. In Chrisman, District Board v. Sreenibash Purohit2, two tins of ghee were seized at the Bolpur railway tution and found adu'terated. The only thing proved against the a used was that he was a partner in the firm to which ghee was consigned. It was held that it could not possibly be said that the accused was storing it for side at the railway station.

When a person purports to sell mustard oil for use as human food and if the mustard oil which he sells is actually found on analy is to be not genuine in the sense that it is not the article which it purports to be or represents to be or it falls below the standard prescribed by the rule, it is not necessary to plote that the mixed oil would be injurious to health. It is sufficient to show that the article is not what it purports to be or that it is not of the standard required by the rule.3 If a person sel's ghee which is found to be below standard then he is liable to be punished unless he successfully establishes the defences which are set out in the Act.1 The more prisence of some foreign matter in small quantity is not necessarily an offence. The courts have to apply their mind to the question whether the admixture of foreign matter was so large that it could not be explained otherwise than by fraud.<sup>5</sup> In Karnidan Sarada v. Emperor<sup>6</sup>, the accused sold mustard oil which was below the standard prescribed by the local Government as he was under the impression that it was lawful to manufacture and sell mixed oil under the description of mixed mustard oil. It was held that in view of the previous record of the accused it was inappropriate to impose on the accused maximum sentence which could be imposed by law to, a first

Pessession of adulterated food is not made a crime under the Act.7 No offence is committed where adulterated ghee is kept in the slipp at the rear portion for being testel and not for sale.8 If the matter or lingue limit added to the article of food is not injurious to the health of the parcha er and if it is shown that the addition was required for the production of preparation of the article the sale would not be deemed "to she prejudice of the purchaser", but if, on the other hand, it is shown that the addition was made fradulently to increase the bulk, weight or measure of the food or to conceal the inferior quality thereof the sale shall be deemed "to the prejudice of the purchaser" and as such would constitute a fulte ation.9 In Bohra Rughubar Dayal v. Emperur, 10 a Food Inspector saw some ubuan e at the accused's place of business and offered to purchase it. He purchased

Rum sheer Chiu liwy v. Paralia Manie palety 1933 Pat. 193: 14 P. L. T. 146:34 Cr. L. J. 572:143 I. C. 65.

Emp. vor v Nur Ahmad, 1934 All. 842: 3 A. W. R. 783:1934 A. L. J. 839: 35 Cr. L. J. 1229:151 I. C. 114. Samplal v. Emperor, 1936 Pat. 636: 17 P. L. T. 953:166 I. C. 206.

6. 1935 Par. 521 16 P. L. T. 655: Fast. C. 728.

B.nav ilis v. E. p. 1930 All. 16: 1930 A.I. J. 911: 125 I.C. 100 All C. L. J. 866; Public Prosecutor v. Kodali A juna 

9. Rambadal v. I | 800, 1957 MI 82, 10. 1931 All. 705:1931 A. I. J. 00(13) L. C. 418:32 Cr. L. J. 1031.

Havi Rakshik Dutt v. Chirman, District Bound, Birbhum, 1941 Cal. 150:42 Cr. L. J. 522:44 C. W. N. 1139:194 I. C, 136:72 C. L. J. 531.
 1941 Cal. 491:43 Cr. L. J. 107:197 I. C.

a small quantity apparently under the impression that it was ghee but the accused informed him that it was not ghee but coconut oil and that it was not intended for food but for manufacture into soap. Chemical analysis proved that the substance was adulterated coconut oil. The accused was charged under Secs. 4 and 5 of the U. P. Prevention of Adulteration Act, 1912 and for keeping a ghee shop without a proper signboard. Particulars of the offence were not given. All that was said was that the offence was under Secs. 4 and 5 of U. P. Act 6 of 1912. It was held that the failure to state the particulars of the offence charged was fatal to the prosecution. It was also held that Sec. 5 was not applicable as there was nothing to show that ghee was demanded and adulterated contut oil was given in its place. It was further held that Sec. 5 was not applicable as the article sold was not an article of food. To offer linse doil as surson oil is not adulteration of food. It is a case of cheating or at least attempted cheating.<sup>2</sup>

The mere omission of the name of the prosecution from the summons would not make the entire trial illegal unless it is possible to see in the circumstances of certain cases that the accused is prejudiced on account of this omission.<sup>3</sup> The learned Judges were of opinion that prejudice was caused to the accused.

A person found guilty of an offence under this section shall be liable on conviction—

- for the first offence to an imprisonment which may extend to one year or to fine which may extend to rupees two thousand or to both;
- for the second offence to an imprisonment which may extend to two years, but which shall not be less than one year and to a fine which shall not be less than rupees two thousand or to both,
- for the third and subsequent offences to an imprisonment which may extend to four years, but which shall not be less than two years and to a fine which shall not be less than rupees three thousand.

The Magistrate can however reduce the minimum penalties if he gives special and adequate reasons in the judgment for reducing the period of imprisonment and the amount of fine.

In the case of a second or subsequent conviction, the Court may in addition to penalties of fine, imprisonment and of forfeiture cause the offender's name and place of residence published in a newspaper at his cost. In case the offender fails to pay the same it shall be recovered from the offender in the manner of recovering fine.

Such publication in the papers will make the public know what persons have been committing these offences.

For the second offence there is no option at all. It has got to be fine and imprisonment. It is appropriate that the punishment for second offence shall be more severe than that for the first offence and that for the third

See also Gopalan v. Emperor, 1936 M. W. N. 750.

Mangal Mal v. The State, 1952 Punj. 149.

Monicital Bond, Brindshan v. State, 1952
 All. 2001; L. form v. Rom hand, 1929,
 All. 157:50 All. 853:114 I. C. 870:30
 Cle. L. J. 369; Kehar Singh v. Emperor,
 1935 All. 219:152 I. C. 367:1934 A. L.

J. 1152: 36 Cr. L. J. 68:57 A. L. J. 400: 4 A. W. R. 940: Hiralal v. Enferce. 1938 All. 395:1938 A. L. J. 497:39 Cr. L. J. 738:1938 A. W. R. 335 I. L. R. (1938) All. 646:176 I. (1. 325 In Ranges, Das v. Emperor. (1930 All. 595): and Raghubar Dayal v. Emperor, 1931 All. 705.

offence it should be still more severe. First offenders are always everywhere let off more lightly.

The provisions of this section are so deterrent that an offender would shake with fear before selling adulterated food. If only the checking staif was alive to its duties it would be difficult if not impossible for anybody to offer adulterated food for sale.

Adulteration of food in the country exists even after the enactment of the Prevention of Food Adulteration Act, 1951. The offenders require to be dealt with more harshly and the trial of offences made expeditious by adopting the summary procedu e. The Bill No. 12 of 1958 which was introduced in the Lok Sabha on 21st March, 1958 is intended to achieve this object. The Bill seeks to introduce summary trials and the sentence of whipping in certain cases. The Bill is reproduced below for the sake of ready reference:

# 'Bill No. 12 of 1958

A Bill fu ther to amend the Prevention of Food Adulteration Act, 1954

Be it enacted by Parliament in the Ninth Year of the Republic of India as follows:

- 1. Short title extent and commencement. (1) This Act may be called the Prevention of Food Adulteration (Amendment) Act, 1958.
  - (2) It extends to the whole of India.
  - (3) It shall come into force at once.
- 2. Amendment of Sec. 20. In Sec. 20 of the Prevention of Food Adulteration Act, 1954 (37 of 1934) (hereinafter referred to as the principal Act), after sub-section (2, the following sub-section shall be inserted, namely,—
  - "(3) Notwithst unding anything contained in this Act, or in any other law for the time being in force, an offence under this Act shall be triable summarily according to the procedure prescribed for summary trials under the Code of Criminal Procedure, 1898, 5 of 1898."
- 3. Insertion of new Sec. 2! A. After Sec. 21 of the principal Act, the following section shall be inserted, namely,—
  - "21A. Public flogging in certain cases. It shall be lawful for the trying court to inflict the punishment of public flogging if the offence is held to be a deliberate or a persistent one."
- 2. Punishment for abetment. Sec. 40, Indian Penal Code, in paragraph 2 provides that the word "offence" in Sec. 109 of the Penal Code denotes a thing punishable under any special or local law as well as a thing punishable under the Indian Penal Code. The law of abetment therefore will apply to Prevention of Adulteration Act. As there is no express provision for the abetment of offence the penalty therefore is the same as the penalty for the offence.<sup>2</sup>
- 3. Punishment for attempt. Sec. 511, Indian Penal Code, deals only with attempts to commit offences punishable under the Indian Penal Code. It can have no application to an attempt to commit an offence under the Feod Adulteration Act.<sup>3</sup>

See Statement of Objects and Reasons appended to Bill No. 12 of 1958 published in the Gazette of India, Extraordinary, Part 1V, Sec. 2, pp. 404-405.
 Emperor, v. Ram Gopal, 1936 All. 865;

<sup>1936</sup> A. W. R. 875: 1936 A. L. J. 1037.

Rom Charita Rom B. I had v. Chairman of District B and, Roy t. In. 1937 Cal. 710-172 I. C. 869: 41 C. W. N., 1301.

- 4. Burden of proof. It is true of course that the burden of proof lies upon the prosecution, but that builden may in effect be assisted or even completely discharged by the admissions of the accused himself.1
- 5. Mons rea' not essential element. In Serras v. D. Rutt no Dice, J. expressed an opinion that in the case of a crime which is defined to a main in words a provision as to the state of mind of the accused it is for the prosecut on to prove mens rea, while in a case where words describing mens rea do not appear in the definition of the crime it is for the accused to show that he acted without mens rea. For the precise statement of law on this point Brend v. Wood3 may be seen. In that case Lord Chief Justice of England said: "It is in my opinion of the utmost importance for the protection of liberty of the subject that the Court should always bear in mind that unless the statute, either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, a defendant should not be found guilty of an offence against the criminal law unless he has a guilty mind." With this their Lordships of the Privy Council agreed in Sriving Mall Bairotia v. Emp ror 4 There are, however, a limited and exceptional class of off nees which can be held to b committ I without a guilty mind, but they are usually of a comparatively minor character.5 Apart from isolated and extreme cales, the principal classes of exceptions may perhaps be reduced to three, and these three are: one is a class of acts which are not criminal in any real sarse, but are acts which in the public interest are prohibited under a penulty. The second class is all public nuisance, and the third case in which, although the proceeding is criminal in form, it is really a summary made of enforcing a civil right.6 Unless the statute either clearly or by necessary implication rules out mens rea as constituent part of a crime, an accused should not be found guilty of an offer ce against the criminal law unless he has got guilty mind.7

No question of mens rea arises where the Legislature has omitted to prescribe a particular mental condition as an ingredient of an offence, because the presumption is that the omission is intentional.8 Mns rais not an essential ingredient of an offence under the Act.9

The Act imposes the penalty when the act is done no matter how innocently. An offence within the section is committed although the seller does not know that the article sold was not of the nature, substance and quality demanded.19

Beer with which a certain quantity of arsenic injurious to health had been mixed in the process of manufacture and ignorance was sold by a retailer without knowledge or reasonable grounds for suspicion of the presence of arsonic in the beer. Held, there was evidence that the beer was not of the nature, substance and quality of the article demanded by the purchaser and the retailer could be convicted under 1875 English Act, Sec. 6.

Respondent, a milk salesman, contracted to supply pure milk to an association. The milk was to be delivered to the association at the railway

<sup>1.</sup> Y ther's Hollann v. Empro, Sind 337: (1940) Kar. 91: 185 I. C.

 <sup>(1895) 1</sup> Q. B. 918; see also The State, v. M. and J. 1933 Punj. 204.
 (1946) 110 J. P. 317.

 <sup>(1946) 110</sup> J. P. 317.
 1947 P. C. 135: 1947 A. L. J. 497: 49
 Bom. 603: 51 C. W. N. 900; (1947)
 2 M. L. J. 539: 60
 L. W. 14: 1942. O. W. N. 52.
 Introduce to the Judgment of Weight,
 J. m. Super J. J. Rate n., (1875) 1 Q. B.
 Q18. 24: p. 921.

<sup>918.</sup> at p. 921.

<sup>6,</sup> Per Wright, J., in Serras v. De Rutzen. Sufra, cited with approval in lock Soloman Macmull v. Emperor. 1943 Bom.

<sup>364:</sup> I. L. R. 1948 Born. 329.
7. Sanval Ram Poddar v. The State, 1953 Pat. 137: 1953 Cr. L. J. 923.

<sup>8.</sup> Legal Remembrancer, Bengal v. Ambika Charan. (1946) 2 Cal. 127. 9. Wald v. Brylay, (1887) 51 J. P. 423. 10. Betts v. Armir al. 1868) 20 Q. B. D. 771: 57 I. J. M. G. 100. 33 L. T. 811: 52 J. P. 471: 36 W. R. 720: 16 Cex C. C. 418 D. C.

terminus in London. Respondent delivered the milk in a pure and unadulterated condition to the servants of the railway company at his local station and the milk was adulterated without his knowledge or consent during transit from the local station to the terminus. Held, respondent was liable to be convicted under 1875 English Act, Sec. 6.1

Where a farmer under a contract of sale of pure milk delivered at a railway station genuine milk for despatch by rail to the purchaser and the milk was found by an Inspector of Nuisances, on reaching the arrival station to be deficient in milk fat and other solids, and there was no evidence before the Justices that it was not tampered with on the journey. Held, that the mere fact that the milk was genuine at the time when it was handed over to the railway company did not relieve the farmer from liability for selling milk not of the nature, substance and quality demanded by the purchaser.2

6. Obstruction of Food Inspectors. In Cost v. The Ambergate, Nottingham and Boston and Eastern Junction Railway Company3 it has been held that to "prevent" does not mean only an obstruction by physical force but it may involve a threat. Refusal to give the sample even on payment is not the same thing as prevention which need not have an element of physical force but it does involve some act which hinders an Inspector from taking a sample.4 An overt act in the nature of physical clash is not necessary to prove the obstruction of the Food Inspector from taking the sample. If a Food Inspector applies to purchase any food exposed for sale, etc. and tenders the price for the quantity he requires as a sample and the person exposing the food for sale, etc. refuses to sell the sample to the Food Inspector, or refuses to allow the Inspector in the course of delivery or transit, the person concerned is guilty of obstructing the Inspector.

If a person throws away the milk from which the Food Inspector sought to take a sample, the accused will be deemed completely to have obstructed the performance of the duty by the officer since after the throwing of the milk by the accused, there was no manner in which the officer could have performed his duties. Not only had the accused done the overt act of throwing away the milk, but he had also completely obstructed the performance of the duty by the officer. The obstruction need not necessarily have been by use of force. The use of the word 'obstruction' itself does not carry any idea of force.

According to Sir James Murray's New English Dictionary one of the general meanings of the word 'obstruct' is to impede, hinder or retard, and in its legal sense of obstructing process under law it means "to commit the punishable offence of intentionally hindering the officers of the law in the execution of their duties". Mere obstruction, therefore, does not carry the meaning or any idea of use of force. It could not in the circumstance, be said that because the Inspector was unable to inform the accused of his purpose, the Inspector could not be said to have been performing the duty enjoined for him by the Act. The accused could not be convicted for obstructing the Inspector in performing the duty under the Act and until it was established by the prosecution the article of food, in this case milk, out of which the Inspector wanted to take a sample was 'food offered or exposed for sale."6

Parker v. Alder. (1889) 1 Q. B. 20: 68 L. J. Q. B. 7: 79 L. T. 381: 62 J. P. 772: 47 W. R. 142: 15 T. L. R. 3: 43 Sol. Jo. 15: 19 Cox C. C. 191 D. C.
 Andrews v. Lockin, (1917) 87 L. J. K. B. 507: 117 L. T. 726: 82 J. P. 31: 34 T. L. R. 33: 16 L. G. R. 199: 26 Cox C. C. 124 D. C.

<sup>3. (1851) 20</sup> L.J.Q. B. 460: 1851 17 Q.B. 127.

<sup>4.</sup> Bishan Dass Telu Ram v. State, 1957 Punj. 99.

<sup>5.</sup> Public Prosecutor v. Murugesan, 1952 M. W. N. 145.

Nazim v. State, 1957 All. 829.

The Chairman of a municipality has no power to authorise the Sanitary Inspector to inspect and examine the food alleged to be adulterated. Therefore conviction of a person under Sec. 21 read with Sec. 12 (2) of the Bengal Food Adulteration Act, 1919, for offering resistance and obstruction to the Sanitary Inspector authorised in such a manner is bad. It may be that his authorisation was defective but if in pursuance of the order of the Chairman he assumes and performs exactly the same duties as he would have assumed and performed if properly and validly appointed with the sanction of the Municipal Commissioners he is a public servant within the meaning of Sec. 19, Bengal Food Adulteration Act read with Sec. 21, Explanation 2, Penal Code, and consequently such a person can be convicted under Sec. 186, Penal Code.

- 7. Appeal. No appeal lies from a decision in a summary trial, sentencing accused to pay a fine of Rs. 200 in a case of food adulteration by reason of Sec. 414, Criminal Procedure Code.<sup>2</sup>
- Offences by companies.

  Offenc

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. For the purposes of this section—

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

SYNOPSIS

# 1. Scope:

Scilesh Chandra Lahiri v. Nihal Chand
Marwari, 1932 Cal. 462: 59 Cal. 234:
36 C. W. N. 134: 33 Cr. L. J. 521:
137 I. C. 812.

Municipal Board, Boxelly v. Rem Geri.,
1940 All. 517: 1940 A. W. R. 482:
1940 A. L. J. 653: (1940) All. 613.

- 1. Scope. If any offence under this Act is committed by the company the consequence is that the director, manager, secretary or other officers of the company become *prima facie* guilty of the offence unless they prove to the satisfaction of the Court—
  - (a) that the offence was committed without their knowledge; and
  - (b) that they used due diligence to prevent the offence.

If the offence against the company is proved to have occurred it is incumbent upon them to give strictest proof of circumstances exonerating themselves. The burden is entirely on them. Similarly, where an offence punishable under this Act is committed by a partner of the firm other partners cannot be discharged from any liability under this Act in respect of such offence until they give proof to the satisfaction of the Court as required by this section. A co-operative society registered under the Madras Co-operative Societies Act, has as a body corporate, a separate existence apart from its individual members. And when an adulterated article of food belonging to the body corporate is transferred to one of the individual members for a consideration it is a sale under the Act and an offence.\frac{1}{2} A co-operative society and its secretary can be separately convicted for adulteration of milk an offence punishable under Sec. 16 (1).

Where the evidence in a trial of an offence under Sec. 16 (1) against a co-operative milk supply society at the utmost disclosed that the day-to-day business of selling the milk was done by the clerk and the secretary, who was only an honorary secretary, was not going to the society daily and the business was left entirely in the hands of the clerk with a check over him by the secretary, it would not make him a person who at the time the offence was committed was in charge and was responsible to the society for the conduct of the business of the society within the meaning of Sec. 17 (1). Where the evidence let in by the prosecution falls short of the strict standard of proof required for conviction under Sec. 16 (1), the secretary cannot be convicted <sup>2</sup>

Forfeiture property.

Act for the contravention of any of the provisions of this Act or of any rule thereunder, the article of food in respect of which the contravention has been committed may be forfeited to the Government.

#### SYNOPSIS

1. Scope.

1. Scope. Where a person has been convicted of an offence under this Act or rules made thereunder the Court may in addition to the punishment mentioned in Sec. 16 order confiscation of the article of food in respect of which contravention has been committed. Where mahua flour and roasted coffee husk are mixed with coffee there; is adulterations an order of the Magistrate for destruction of the same is not only a lawful one but proper one.<sup>3</sup>

Where all the tins of one consignment of food are of the same brand it would be unreasonable to expect the Sanitary Inspector to take a sample from each tin and if a sample taken from one of the tins is found to contain

2. The Public Prosecutor v. B. Karu' pia 1,

1958 Mad. 183.

Public Prosecutor v. Ramchandrayya, 1948
 Mal. 329 49 Cr. L. J. 397: 61 M.
 L. W. 111: (1948) 1 M. L. J. 117: 1948 A. W. R. (Supp.) 54.

<sup>3.</sup> Ismail Abdul Satt, In re, 1945 Mad. 68. (1944) 2 M. L. J. 336: 57 M. L. W: 590:1944 M. W. N. 687: 218 I. C. 302: 46 Cr. L. J. 456.

adulterated substance, the Sanitary Inspector is entitled to seize the whole consignment and its forfeiture is lawful.<sup>1</sup>

Forfeiture is not essentially a punitive measure for the person committing the offence but it is necessary in the interest of health because if there is any adulterated foodstuff eating which the health of the community is likely to be injuriously affected, then it is fit and proper that such foodstuff should be destroyed after being forfeited.<sup>1</sup>

Defence which may or may not be allowed in prosecution under this Act.

Chaser having purchased any article for analysis was not prejudiced by the sale.

It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purprejudiced by the sale.

(2) A vendor shall not be deemed to have committed an

offence if he proves-

(i) that the article of food was purchased by him was the same in nature, substance and quality as that demanded by the purchaser and with a written warranty in the prescribed form, if any, to the effect that it was of such nature, substance and quality:

(ii) that he had no reason to believe at the time when he sold it that the food was not of such nature,

substance and quality; and

(iii) that he sold it in the same state as he purchased it:

Provided that such a defence shall be open to the vendor only if he has submitted to the Food Inspector or the local authority a copy of the warranty with a written notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to that person:

Provided further that the warranty given by a person resident in any area in which this Act is not in force, shall be a defence to the vender only if the vendor proves to the satisfaction of the Court that he had taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the warranty.

(3) Any person by whom a warranty as is referred to in sub-section (2), is alleged to have been given shall be entitled to appear at the hearing and give evidence.

Sub Nanden Peri v. Chairman, Midnapur District Board, 1940 Cal. 213: (1940)
 Cal. 333: 41 Cr. L. J. 582: 188

<sup>2.</sup> See Parliamentary Debates, Rajya Sabha Vol. VII, No. VIII, dated 1st September, 1954, p. 1093.

### SYNOPSIS

- 1. English Law.
- 2. Bar of excuses in defence.
- 3. Defences.
- 4. Meaning of warranty.
- 4. Right of person giving warranty,
- 5. Word "warrant" or "warranty" not necessary.
- 6. Must form part of contract between seller and original vendor.
- 7. Must be in writing.
- 8. Cantract to give written warranty whether writing necessary.
- 9. Invoices.
- 10. Labels.
- 11. Terms of written contract.
- 12. Contract for supply of new milk.
- 13. Articles bought by seller "under warranty of purity" and sellers guarantee

- it is such.
- 14. Disclaimer of responsibility after delivery.
- 15. Article sold in the same state as when seller purchased it.
- 16. Onus of proof.
- 17. Addition of preservative.
- 18. Defence of warranty where available.
- 19. Sale by servants.
- 20. Warranty how proved.

  -Notice of defence.
- 21. Giving false warranty.
- 22. Notice of defence.
- 23. Successive warranties.
- 24. Misapplication of warranty.
- 25. Who may be liable.
  - —Conviction of person who is not himself the actual vendor.
- 1. English Law. Section 4 of the English Food and Drugs Act, 1938, which sets out defences available in respect of food and drugs not of the nature, substance or quality demanded runs as under:
- Section 4. Food and Drugs Act, 1938, Defences available in proceedings under section 3. In proceedings under the last preceding section it shall be a defence for the defendant to prove—
  - (1) where some substance has been added to the food or drug in question—
    - (a) in the case of a food, that the substance is not, and its addition has not rendered the food, injurious to health, or, in the case of a drug, that the addition has not affected injuriously the quality or potency of the drug; and
    - (b) that the addition was not made fraudulently to increase the bulk, weight or measures or conceal the inferior quality, of the food or drug; and
    - (c) either-
      - (i) that the addition was required for the reduction or preparation of the food or drug as an article of commerce in a state fit for carriage or consumption; or
      - (ii) that a label satisfying the requirements for the next succeeding section was attached to, or printed on the wrapper or container of, the article sold;
  - (2) where some constituent has been abstracted from the food or drug in question—
    - (a) that the abstraction has not rendered the food injurious to health, or, as the case may be, affected injuriously the quality or potency of the drug, and was not made fraudulently to conceal the inferior quality of the food or drug; and
    - (b) either—
      - (i) that the abstraction was required for the production or preparation of the food or drug as an article of commerce in a state fit for carriage or consumption; or

- (ii) that a label satisfying the requirements of the next succeeding section was attached to, or printed on the wrapper or container of, the article sold:
- (3) where the food or drug in question is the subject of a patent in force, that it was supplied in the state required by the specification of the patent;
- (4) where the food or drug in question contains some extraneous matter, that the presence of that matter was an unavoidable consequence of the process of collection or preparation;
- (5) that the article supplied was a proprietary medicine and was supplied in response to a demand for that medicine;
- (6) where the proceedings are in respect of diluted whisky, brandy, rum or gin, that the spirit in question had been diluted with water only and that its strength was still not lower than thirty-five degrees underproof:

### Provided that-

- (a) none of the defences specified in paragraphs (1) to (4) of this section shall be available in this case of any food which does not comply with any relevant provisions contained in regulations made under this Act for prescribing the composition of, or prohibiting or restricting the addition of any substance to food; and
- (b) nothing in paragraph (6) of this section affects the provisions of section 14 of the Finance Act, 1935, with respect to the dilution of spirits after computation of duty.
- 2. Bar of excuses in defence. The Food Adulteration Act make; it penal to sell adulterated articles. It does not excuse the offence on the ground that the purchaser knew that what he was purchasing was not pure The Act was intended to protect the public from using adulterated articles and therefore it has made it penal to sell these adulterated articles to persons irrespective of the fact that the purchaser knew the article to be adulterated or otherwise. With regard to the article of food it is no defence to say that these articles can be adulterated and sold in the market with the publication of the fact that they are adulterated.1 The ignorance of the accused of the nature, substance or quality of the article is no defence to a prosecutor under the Act. Where an accused is prosecuted for an offence pertaining to sale of an adulterated article of food it cannot be accepted as a defence that he was not responsible for the alleged adulteration and that he sold the article in the same condition as that in which he received it inasmuch as such an offence is expressly excluded by this section.2 The accused is also not entitled to plead that the purchaser having bought it only for analysis was not prejudiced.

Where sale of an article of food in adulterated condition is made punishable by the rules framed under an Act it is no defence to say that the accused had put up a signboard on his shop that he was selling such article in adulterated condition for some purposes other than for consumption as an article of human food. The article in question being sold at a wholesale rate to small

<sup>1.</sup> Rakhal Chandra Dutta v. Puran Chandra Ch. d. 1930 Cal. 273: 127 J. C. 57: 57 Cal. 1123: 34 C. W. N. 281: 31 Cr. L. J. 1051.

<sup>2.</sup> Public Prosecutor v. Venkadari Naga Pull-

iah Chetti, 1946 Mad. 414: 47 Cr. L. J. 869: (1946) 1 M. L. J. 461: 1946 M. W. N. 352: 59 M. L. W. 322: 226 I C. 265.

shopkeepers might be sold by the latter to the inhabitants of the locality for consumption as an article of food.1

- 3. Defences. In a prosecution under the Act it will be a defence for the vendor to prove-
  - (i) that the article of food purchased by him was of such a nature, substance and quality as that demanded by the purchaser;

(ii) that the article of food was purchased with written warranty to the effect that it was of the same nature, substance and quality;

(iii) that he had no reason to believe at the time of the commission of the alleged offence that it was not of the same nature, substance or quality;

(iv) that the article of food sold was then in the same state as when he

purchased it;

- that he has sent to the Food Inspector or the Local Authority a copy of the warranty with a notice stating that he intends to rely on it;
- (vi) that he has specified in the written notice the name and address of the person from whom he received the warranty;

(vii) that he has also sent a like notice of his intention to rely on that

warranty to such person;

(riii) that he has taken reasonable steps (to the satisfaction of the Court) to ascertain and did in fact believe in the accura, y of the statement contained in the warranty. Such a defence will be open to vendor only when the person giving the warranty resides in any area in which this Act is not in force.

It will be observed that under sub-section (2) of the section a vendor may exculpate himself by proving that when he gave the warranty he had reason to believe that the statement or description in question was accurate.

If a person sells ghee which is found to be below standard he is liable to a conviction unless he successfully establishes the defences which are set out in Sec. 19 of the Act.<sup>2</sup>

Where butter which is offered for sale in sealed tins in the state in which it was purchased contains extra moisture which had got unavoidably mixed in the process of manufactures the conviction cannot be sustained.3

The accused purchased butter after taking all reasonable precautions like getting letters of warranty. The bu ter was to be washed, cleansed and drained on return of the seller from whom the accused purchased the butter. The employee in the shop sold the butter to the Sanitary Inspector when the accused was absent. The butter was found to be adulterated with 8. I per cent of excess water. It was held that the accused was not guilty as he had used due diligence to enforce the execution of the Act.4

Meaning of warranty. The term warranty is not defined in the Act but both at common law and by statute it has been contrasted with the term "condition" when applied to the law of contract. It may be defined as a provision which is subsidiary or collateral to the main purpose of the contract breach of which gives the innocent person a right to damage but not as a right to treat the contract as at an end.5

Emperor v. Nur Ahmad, 1934 All. 842: 3 A. W. R. 783: 1934 A. L. J. 839: 151 I. C. 114: 35 Cr. L. J. 1229. Delhi Bather v. Corporation of Madras, 1940

Mad. 221; (1940, 1 M. L. J. 169; 1939 M. W. N. 1224; 51 M. L. W. 203; 41 Cr. L. J. 552; 188 I. C. 150.

Public Prosecutor v. K. V. R. Annamalai Chettiar, 1953 Mad. 862.
 Halsbury's Laws of England. 3rd Ed.,

Vol. 17, p. 5, 99.

Nagendra Nath Saha v. Emperor, 1930 Cal. 274: 51 C. L. J. 227: 31 Cr. L. J. 1151: 127 I. C. 57: 34 C. W. N. 281: 57 Cal. 1123.

- 4. Right of person giving warranty. The person by whom the warranty is alleged to have been given is entitled to appear at the hearing and give evidence and the Court may, if it thinks fit, adjourn the hearing to enable him to do so.
- 5. Words "warrant" or "warranty" not necessary. A firm of lard manufacturer on December 17, 1892, entered into a written contract for the sale of lard to respondents in the following terms:

"We have this day sold to you three tons Kilverts Pure Lard for delivery to end of January, 1883."

On December 23, a parcel of lard was consigned to respondent by the manufacturers and delivered to him under the contract. Respondent subsequently sold a portion of such parcel to the appellant as and for lard. Upon analysis it turned out to be adulterated. Respondent had sold it bona fide and in the same state as it was in when he bought it. On information against respondent for having contrary to 1875 English Act sold the lard not being of the nature, substance and quality demanded by the appellant. Held, the contract of December 17 contained a sufficient written warranty of purity in respect of the specific parcel consigned on December 23 to satisfy Sec. 25 of the English Act and respondent was entitled to be discharged from the prosecution.

The contract does not in terms say that purity of the lard is warranted but in my judgment it is not necessary that the word "warranted" should be actually used.

To my mind it is enough if the language of the document imports a warranty and shows an intention on the part of the vendor to warrant.<sup>1</sup>

6. Must form part of contract between seller and original vendor. The written warranty mentioned in the section in order to protect the seller of an article not of the nature, substance and quality demanded by the purchaser must have formed part of the contract under which the seller purchased the article from his vendor, as having been given either when the contract was made, or, if afterwards then in pursuance of a term in the contract that it should be given. By an oral contract a phamaceutical chemist bought from the manufacturers through their traveller a dozen bottle of quinine wine to be made according to the British Pharmacopoea. He afterwards received from them a written invoice for the wine in which it was described as quinine wine for the wine so made. The wine was delivered to him a day or two later. The cork of each bottle was sealed with a capsule and on a label pasted round the paper covering the bottle was this printed notice..... "Made according to the British Pharmacopoea". We wish to state that our orange quinine wine contains no salicylic acid or similar material introduced for keeping purposes or in lieu of deficiency of alcohol, but is pure orange wine made by fermentation and matured by age ... Subsequently the chemist sold to an inspector a bottle of wine which on analysis was found not to be quinine wine of British Pharmacopoea. The chemist was charged with having sold to the prejudice of the purchaser a drug, to wit the said bottle of quinine wine, which was not of the nature, substance and quality demanded by the purchaser; and he relied upon the label and invoice as constituting a written warranty under Sec. 25 of the English Act. The information having been dismissed, held, the notice and/or invoice, assuming that on their construction they contained a warranty that the article sold was quinine wine of the British Pharmacopoca

<sup>1.</sup> Per Charles, J., in Laidland v. Wilson,

<sup>53</sup> J. P. 58: 42 W. R. 78: 10 T. L. R. 18: 38 Sol. Jo. 12: 10 R. 6. D. G.

did not constitute a "written warranty" to that effect within the meaning of the section, seeing that they did not form part of the contract under which the chemist had bought the article as they had neither been given when the contract was made, nor afterwards in pursuance of any stipulation in the contract that they should be given. Sample—The label and invoice did not on their true construction contain a warranty that the article was quinine of the British Pharmacopoea.<sup>1</sup>

A grocer sold ground ginger adulterated with 90 per cent of exhausted or spent ginger. He purchased it as "ground ginger" in canisters and had no reason to believe it otherwise than genuine either when he purchased it or retailed it. He had received from his vendor an invoice in which it was described as "ground ginger" and each canister bore a printed label "warranted genuine pure ground ginger". Held, neither the invoice nor the label together or separately constituted a warranty within Sec. 25 of the English Act which would avail as a defence to a prosecution under the Act. To constitute a warranty there must be some express individual representation in writing nor necessarily express with reference to the Act but an essential term in the bargain by the original vendor to the retail dealer forming part of contract to sell.<sup>2</sup>

7. Must be in writing. In order that a warranty may be relied upon as a defence under the section, such warranty must have been given to the person raising that defence from his immediate vendor and must be given in writing.<sup>3</sup>

In case there is no written warranty about the article exposed for sale, the defence under sub-section (2) of this section shall not be open to the person who is prosecuted for an offence under the Act.<sup>4</sup>

A bazar chaulhri took sample of ghie from the shop of the accused and the analyst stated that it contained fat or oil to pure ghes. All that had been produced by the accused to defeace was a number of cash vouchers showing that a wholesale firm supplied him give on various occasions in 1937. In the cash vouche's there was a print d line which stated that the glue sold by the firm was actual village ghe and that the gas ries were sold at a cheap rate. It was held that this line was not in any sen e a written warranty and the mere fact that the signature of the vendor of curred at a totally different place in the bottom of that form did not imply that the signature was attached to that line. The line in question was a mere advertisement alleging that the ghee was go d and the processes were the p. It was further hold that if the written warranty had been produce lof a propen ature it would be to have been incumbent on the bazar chaudhri to go to the wholesale dealers and obtain a sample. It would have been for the arcused to is', the bayar chardhri accompany him to wholeside shop and for the accused to ask for a sample to be taken from the wholesale shop and submitted of analysi.5

8. Contract to give written warranty: Whether writing accessary. A contract to give written warranty need no bein writing. The C. P. D.

<sup>1.</sup> Jayens v. Hindle, (1921) 2 R. B. 581: 90 L. J. R. B. 603: 124 L. T. 670: 85 J. P. 121: 37 T. L. R. 454: 65 Sol. Jo. 397: 19 L. G. R. 231: 20 Cox. C. C. 709 D. C.

<sup>2.</sup> Jirons v. Van Trump, (1895) 64 L. J. M. C. 171: Sub-nam Irons v. Van Tromp. 72 L. T. 499: 59 J. P. 246: 15 R. 392 Sub-nam Irons v. Van Tromp, 11 T. L. R, 320: 18 Cox. C. C. 132 D. C.

<sup>3.</sup> Hargreaves v. Spackman, (1907) 98 L. T. 41: 72 J. P. 52: 24 T. L. R. 173: 52 Sol. Jo. 132: 6 L. G. R. 145: 2 Cox. C. C. 541 D. C.

F. peror v. Brijfal, 160 I.C. 189 Cr. L. J. 403.

Parchem Ronv. Empore. 1933 All. 538: 1938 A. L. J. 780: 1938 A. W. R. 490: 39 Cr. L. J. 959: 177 I. C. 704.

Co. Ltd. by a contract in writing agreed to bay pure new milk with all its cream, each churn to bear written warranty. To each churn war, attached a label: "Warranted pure milk with all its cream delivered under contract." The company also verbally agreed to buy milk and that a written warranty should be given with each consignment in the form of a label. To a churn delivered under the agreement was attached a label "Warranted pure cream new milk with all its cream."

Prosecutions having been instituted against the company under Sec. 6 of the 1875 English Act, notice was given on their behalf under Sec. 20 of the 1899 English Act and copies of labels were enclosed. It was found by the Magistrate that all the requirements of Ser. 25 of the English Act, 1875, had been complied with, and he dis harged the company from the projecution for selling milk of the nature, substance and quality demanded by purcha er, such milk being delivered in pursuance of these contracts. Held, the Magistrate was right.1

9. Invoices. An invoice is merely a description of the acticle sold and cannot be said to be a warranty given in accordance with the provisions of the section.<sup>2</sup> Description upon a sale by written description does not amount to a written warranty within the meaning of the section.3 Printed line in the cash voucher stating that the article sold by the firm was pure is not in any sense a written warranty. Such line is a mere advertisement alleging that the article is good.4

On a prosecution under 1875 Englisk Act for selling as lard a substance which was lard adulterate I with upword of 15 per cent of water, defendant proved that he sold the substance in the same condition as it was in when he bought it and that when he purchased it he received an invoice in which it was described as lard. Held, that the invoice was not a written warranty so as to discharge defendants.<sup>5</sup>

Upon a sale of batter to respondent the invoice dated the day of sale, contained the words "Guaranteed pure" followed by the initials of the vendor whose full name was upon the invoice. Some of this butter was subsequently sold to app llant by a servant of the respondent in respondent's shop, and on analysis was fourl to contain an admixture of 17 per cent foreign fat. Respondent's manager was summoned for an off-nce under 187) English Act, Sec. 6. At the hearing the name of the respondent was by his constat substituted for that of his manager, but against the concent of the prosecutor. Respondent relied on the invoice as evidence of written warranty within Sec. 25 of the same Act and the Justice: dismis ed the information under the section. Held, there was evidence upon which the Justices could find a written warranty and the substitution of respondent for original defendant without his consent did not necessarily invalidate the proceeding.6

10. Lab As. A label on cash bill is not a written warranty in the prescribed from 7

Appellant bought a cask of vinegar from G. & Co. The cask had on it a printed label bearing the words "Vinegar warranted unadulterated G. & Co."

1. P. o. A. o. Ram. v. Emperor, 1938 All. 538: 39 C. L. J. 554: (1938) All. 797: 1938 A.W.R. 190: 1038 A. L. J. 780: 177 I. C. 875.

In mg v. P. of Puby Co. L. L. Basson v. Same, (1902) 87 L. T. 70: 66 J. P. 804: 18 T. L. R. 77: 20 Cox. C. C. 295 D. C.
 State v. Est Malunt, 1954 All. 97.
 Room v. Hopley, (1878) 3 Lx. D. 209: 97 L. J. M. C. 118: 38 L. T. 649: 42 J. P. 101: 20 W. R. 660 D. C.

Rook v. Hobber. (1878) 3 Ex. D. 209: 4 L. J. C. M. 118: 38 L. T. 649 42: J. P. 551: 26 W. R. 663 D. C.
 Havekin v. Williams. (1895) 59 J. P. 533: 11 T. L. R. 425 D.C.
 Public Prosecutor v. Verkadari Naga Pulliah C. stri 1946 Mad 4114: 47 Cr. L. L. 260.

Caetti, 1946 Mad. 414: 47 Cr. L. J. 869: (1946) 1 M. L. J. 461: 1946 M. W. N. 352: 59 M. L. W. 322: 226 I. C. 265.

and the vinegar was invoiced to appellant as G's vinegar. IIIII, there was sufficient written warranty to entitle appellant to the protection afforded by Sec. 25 of the English Act.<sup>1</sup>

Appellants were convitted of having sold malk to respondent not of the nature, substance and quality demanded. They proved that the had bought the milk under a written contract with the producer, by which they were to be supplied with a certain quantity daily for its mouth. The contract contained the following clause: "And the van lonke eigenvant to each and every supply of milk delivered of incourse of delivery, or to be delivered by him under this contract, to be pure, genuine, and new milk, unadulterated, and with all its cream on". The milk was delivered at a London to minus in cans, to each of which a label was attached stating that it contained such and such a quantity of warranted, genuine he milk with all its cream on. Held, there was a sufficient warranty on the part of the producer to entitle appellants to projection afforded them by Sec. 25 of 1875 English. Act and the conviction must be quashed.<sup>2</sup>

S sold land to E which was adulterated with 8 per cent leef fat, and was charged under 1875 English Act. The defence was that it was bought from the manufacturer in skins which were stamped with words "warranted pure." H ld, no sufficient warranty to satisfy Sec. 25 of the English Act.<sup>3</sup>

11. Terms of written contract. In a prosecution under 1575 English Act for adulterating milk where defendant relies on Sec. 25 of the Act as a defence, it is sufficient if in order to prove that he bought the milk in question with a written warranty he proved that he had contracted with dairyman, to supply him with milk daily; that they gave him a written warranty with respect to all milk which they should so supply and that the milk in question was sold and supplied to him under that contract and warranty. He need not prove a specific wrritten warranty with respect to each delivery; nor need there be evidence in writing to connect the milk in question with the warranty on which he relies.4

Respondent had for several years been supplied by a farmer under a verbal contract with all the milk required by him in his milk-vending business and in September, 1903, the farmer gay the respondent the following letter in writing, "I hereby guarantee and warrant that all milk supplied by me to......is of the nature, quality and substance demanded by law and I give this warranty for the purposes of the sale of Food and Drugs Act, 1899." Both intended this to be continuing warranty. Respondent sold milk supplied by the farmer under the warranty, which milk contained added water and on being summoned under 1875 English Act, Sec. o, he set up a defence under Sec. 25 of the English Act that he purchased the milk with a witten warranty. There was no written warranty other than the letter and there was no evidence in writing to connect the milk sold with the letter: Held, as the letter referred to all milk supplied to respondent it was in its lif sufficient evidence in writing to connect the warranty with the milk sold and therefore there was a written warranty.

By a contract in writing, appellant agreed to purchase for a company "the whole of milk required for his dairy" for twelve months from October 1,

<sup>1.</sup> Lindsay v. Rook, (1894) 63 L. J. M. C. 231: 38 J. P. 735: 10 T. L. R. 643: 10 R. 526 D. C.

<sup>2.</sup> Farmers and Cleveland Dairy Co. Ltd. v. Stevenson, (1890) 60 L. J. M. C. 70: 63 L. T. 776: 55 J. P. 407: 17 Cox. C. C. 201 D. C.

<sup>3.</sup> Elder v. Smithson, (1893) 57 J. P. 809 10

T. L. R. 63: 38 Sol. Jo. 155 D. C. 4. Elist v. Picker, 1901, 2 K. B. 817: 70 L. J. K. B. 795: 85 L. L. 50: 65 J. P. 743, 17 T. L. R. 572: 20 Cox C. C. 18 D. C.

Draper v. Newshan, (1910) 102 L. T. 280: 74 J. P. 124: 8 L. G. R. 144 D. C.

1 05, and the contract contained a warranty that all milk to be delivered by the company to the a) pellant should be pure. In Jone, 1006, milk was a livered to appellant by the company under the contract accompanied by a delivery note, which showed that the milk came from the company but which did not in terms refer to the contract. Some of the milk was sold by appellant and was found upon analysis to have 28 per cent of milk fat abstracted from it. On an information against appellant for having sold the milk contrary to the provisions of English Act, 1875, he relied on the warranty contained in the contract as a defence under Sec. 25 of that Act. It-ld, as the warranty was by the contract expressly applied to all milk sold by the company to the appellant during the specified period, the contract itself was sufficient evidence in writing to connect the particular consignment of milk with the warranty and Sec. 25 of the English Act had been satisfied.

Upon the hearing of an information against appellant for having contrary to the provisions of the 1875 English Act sold on April 12, 1883, certain milk to the respondent which was not of the nature, substance and quality demanded by him as it contained a percentage of water, appellant proved that he had purchased the article in question under a written contract made with F on March 24, 1883, whereby F agreed to sell to the appellant 86 gallons of good and pure milk, each and every day, for six months, "the said milk to be delivered twice daily." Held, this contract did not constitute a written warranty within the meaning or Sec. 25 of the English Act in respect of the specific article sold by appellant to respondent on April 12, and therefore appellant was not entitled to be discharged from the prosecution.<sup>2</sup>

Upon the bearing of an information against respondent for having, contrary to the provisions of the English Act, 1875, sold on December 15, 1899, certain milk to appellant, which was not of the nature, substance and quality demanded by the appellant, the respondent relied on an agreement in writing dated January 20, 1899, by which a farmer agreed to sell to respondent 1,000 gallons of milk weekly, "the milk to be pure new milk". Held, even if the agreement amounted to a warranty within the meaning o Sec. 25 of the Luglish Act, there must be some evidence in writing to show that the particular milk sold to appellant was purchased with that warranty and in the absence of that evidence the agreement afforded no defence to respondent.<sup>3</sup>

In August, 1905, a farmer contracted to supply respondent with milk and gave to respondent a letter stating that he guaranteed that the milk supplied by him to respondent was perfectly pure and with all its cream. In Lecember, 1905, milk was consigned to respondent by the farmer and delivered to him under the contract, and respondent subsequently sold a pint of that milk to appellant as and for new milk, which upon analysis was found to contain 16 per cent of added water. On information against respondent for having contrary to English Act, 1875, sold the milk not being of the nature, substance and quality demanded by the appellant, respondent relied on the warranty contained in the letter as a defence under Sec. 25 of that Act. Held, a warranty relating to goods not in existence when warranty is given may be a good warranty within Sec. 25 but in the absence of any evidence in writing connecting the particular milk sold to appellant with the warranty afforded no defence to the respondent.<sup>4</sup>

tr. n. v. West kerdt. (1907) 2 K. B. 80:
 D. L. J. K. B. 628: 96 L. T. 641: 71 J. P. 223; 23 L. L. R. 424: 5 L. G. R. 608: 21 Cox G. G. 415 D. G.

R. 608: 21 Cox C. C. 415 D. C. 2. Hanis v. May, (1883) 12 Q. B. D. 97: 53 L. J. M. C. 39: 48 J. P. 261: 32 W. R. 595 D. C.

<sup>3.</sup> Robertson v. Harris, (1900) 2 Q. B. 117:

<sup>69</sup> L. J. Q. B. 526: 82 L. T. 536: 69 J. P. 565: 48 W. R. 571: 16 T. L. R. 343: 44 Sol. Jo. 394: 19 Cox C. C. 495: D. C.

<sup>4.</sup> Walts v. Stenens. (1906 2 K. B. 3.3: 75 L. J. K. B. 828: 96 L. T. 200: 70 J. P. 418: 22 T. L. R. 622: 4 L. G. R. 821 D. G.

A written contract for the sale of warranted pure new milk having expired the seller continued to supply milk to the purchaser. Both during the period of written contract and subsequently a label was attached to each churn containing the words "Pure new milk" the names of both the seller and the purchaser, the quantity and the date. Hald: the label was a sufficient written warranty in respect of the milk so delivered after the expiration of the contract.1 Appellant was summoned under English Act, 1875, for se'ling to the prejudice of the purcha comik not of he manic, substance and quality demanded. Appalant set up a war into contained in a contract by which his vendor, E, agreed to supply to appellant the milk supplied to E by one B, in the same condition as received and as warranted by him, pure new unskimmed milk, and in a label which was attached to the particular milk in question and was addressed to E and which had on it the words "Warranted pute and new and un kimmed milk". Appellant an agent for E received at the railway station the particular mak in question, which has been consigned from B to E. Held, whether the label was or was not a sufficient warranty within the Landish Act, 18.5, with a warranty was contained in the contract between E and appellant and the label constituted a sufficient connection between the particular consignment and the warranty and therefore appellant could not be convicted.2

- 12. Contract for supply of new milk. By a memorandum of agreement made between a dairy company and respondent, the former agreed to sell and the latter to purchase certain quantities of new milk at specified prices to be delivered at respondent's station. Nothing was said in the memorandum that any warranty would accompany the milk, but attached to each of the churns in which the misk was deliverd to the respondent was a label which the words "Guaranteed pure unskimmed milk with all its cream". On a pro-ecution of respondent under English Act, 1875, Sec. 9 for having sold some of the milk from which 10 per cent of the original fat had been abstracted so as to affect injuriously its quality, substance, or nature, and without making disclosure of the alteration, respondent relied as a defence under Sec. 25 of that Act on a written warranty, which he alleged was contained in (1) the said memorandum of agreement, and 2 the said label. Held (1) the written label did not form part of the contract between the dairy company and respondent, as there was nothing to connect it with the memorandum of agreement and therefore the two documents could not be read together as constituting a warranty, and (2) the provision in the memorandum of agreement for the supply of "new milk" did not constitute a written warranty as the words "new milk" did not warrant that new milk would be genuine milk.3
- 13. Articles bought by sellers "under warranty of purity" and sellers guarantee it as such. Respondent having been summoned under English Act, 1875, Sec. 6, for selling milk which was adulterated by added water, relied upon the defence given by Sec. 25 of that Act that he had purchased the milk under a written warranty and proved that he had purchased the milk from a dairy company under an agreement which stated that the dairy company "purchase all milk sold by them under a warranty of its purity from the farmers and agree to put the same on rail, thoroughly well cooled over a refrigerator, and guarantee it as such up to the time of

Lewis v. Weatheritt. (1909) 100 L.T. 367: 73 J. P. 164: 25 T. L. R. 226: 7 L. G. R. 502: 21 Cox C. C. 789 D, C.
 Reas v. Davis, (1908) 72 J. P. 375: 24 T. L. R. 735: 6 L. G. R. 1038 D. C

Dewey v. Faukner, (1923) 1 K. B. 315: 92 L. J. K. B. 318: 128 L. T. 602: 37 J. P. 45: 30 T. L. R. 130: 67 Sal. Jo. 316: 21 L. G. R. 96: 27 Cox C. C. 388 D. C.

delivery at the above address." Held: the words "and gurantee it as such" in the agreemant ought to be construed as referring to the warranty of purity given by the farmers, and so construed the agreement amount doto a written warranty upon which respondent was entitled to rely under Sec. 25 of the English Act, 1875.1

14. Disclaimer of responsibility after delivery. The addition of the words "but without accepting any responsibility after delivery" do not affect a warranty so as to make it unavailable as a defence.2

Appellant being charged under English Act, 1875, with selling milk that was not of the nature, substance and quality of the article demanded by the purchaser, proved that the milk had been bought by him from a company under a written agreement and had been sold by him in the same state as when it was purchased. The agreement provided that "the company warrants each and every consignment of milk delivered under this contract to be pure, genuine, new milk with all its cream according to the conditions of the Food and Drugs Act," and that no responsibility is taken by the company after the delivery other than under the Food and Durgs Act and that for all other purposes the buyer must satisfy himself at the time of delivery that the milk was pure, and that he should not be entitled to make any claim against the company for damages in respect of milk accepted by him. Hld, the agreement constituted a good warranty and the appellant was therefore entitled to be discharged from the prosecution.3

15 Article sold in the same state as when seller purchased it. In addition to the written warranty it is necessary for the accused to prove as part of his defence under sub-section (2) (iii) that he sold the article in the same state in which he purchased it. To substantia e this plea the statement of the munib that it was sold in the same state would not be sufficient. Some independent evidence in support of that statement is necessary.4 Where a person charged with selling adulterated article of food proves that he took a written warranty specially supplied to him with the article by a reputable vendor and had no reason to suspect anything wrong with the same and sold it in the same state as he received it, prima facie he had taken all reasonable precautions against committing an offence against the Health Acts but in every case it is a question of fact for the Magistrates to decide whether reasonable precautions have been taken.5

It is not enough that vendor had no reason to believe that state of the milk had been changed while in the vendor's premises. The burden is on him to prove that it was not changed. B, a refreshment contractor, had a written contract to be supplied with pure milk. The milk was delive ed to Bat 10, 30 a. m., and the lactometer showed standard milk. Last of it when sold at 7. 30 p. m. was found to contain 35 per cent of add-d water. The Magistrate dismissed the summons holding that B had to read to believe that the milk had been tampered with. Held the Magistrete was wrong and he ought to have found that the milk when sold was in the same state as when it was delivered to the sellers and case remitted to find that fact.6

<sup>1.</sup> Jackling v. Carter, (1912) 107 L. T. 24: 76 J. P. 292: 10 L. G. R 632: 23 Cox C. C. 54 D. C.

Cox G. G. 54 D. G.

2. Wilson v. Playle, (1903, 88 L. T. 551; 67 J. P. 263; 1 L. G. R. 870; 20 Cox G. G. 43; D. G.

3. Place ght v. Burred, (1913, 2 K. B. 362; 82 L. J. K. B. 571; 108 L. T. 1006; 77 J. P. 215; 29 T. L. R. 398; 11

L. G. R. 457: 23 Cox C. C.

Pancham Ram v. E · β. ω. 1938 All. 538: 1938 A. L. J. 760: 1939 A. W. R. 490: 39 Cr. L. J. 959: 177 I. C. 704.
 Relay v. Dω (1908 V. L. R. 377

Jour v. Balled 2, 4771 3 J. P. 473; 10 T. L. R. 265 D. C.

On an information before Justices under English Act, 1875, Sec. 6, for selling an article of food not of the nature, substance and quality demanded, defend into relied on a written warranty from their vendor. The article de nanded was blackberry jelly, and there was a label on the jar in which it was sold with the words, "Finest quality Blackberry Jelly." Prepared from the ch icest fruit of the season and fruit juice. "The Analyst certified that the sample contained at least 2 per cent of apple pulp, and he stated in evidence that he believed that the sample consisted of two-thirds apple and one-third blackberry. Evidence was given for defendants that the jelly was sold as it was purchased and that they had no reason to believe it to be otherwise than as de canded. The Justices, however, found that defendants were aware that contents of the jar were not of the nature, substance and quality demanded and that they had reason to believe that the article was otherwise than as degended, when they sold it. Held, except for the label there was no evidence of defendant's knowledge of the contents of the jar and the label was not sufficient evidence to support the finding of the Justices that defendants had reason to believe that the article was otherwise than as demunded, and therefore the conviction must be quashed, although had the Justices found merely that they were not satisfied as to defendant's belief that the article was in accordance with the warranty, the conviction might have been supported.1

Respondent purchased milk from H under a written agreement, whereby H had agreed to sell duily a certain quantity of milk to respondent and had warranted that all milk should be pure, unadulterated, new milk with all its cream and should conform to the standard fixed by the Regulations made under Australian F od and Drugs Act, 1900, and that such warranty should apply to every morning and afternoon instalment of milk supplied by H to the vendor. The milk when sold to the appellant was in the same condition as when he bought it from H and he had no reason to believe that it was otherwise than standard milk. Hold, the warranty in the agreement was a warranty within Australian Food and Drugs Act, 1908, Sec. 57, and afforded a good defence.<sup>2</sup>

In a charge for giving false warranty it was contended by the accused that as he was a private person who had merely sold butter because it had turned out not to be wanted for the festival for which it was purchased and that as the butter to his knowledge had been purchased from a reputable form, he had reason to believe that the statements or descriptions which he gave in his warranty in writing, viz., that it was pure butter, were true. If I, that the petitioner may have thought that the butter would be unabutterated, but it could not be said that he had reason to believe that it was unadulterated since it was clear that he had himself no knowledge of the butter which justified him in saying either that it was or was not adulterated.

Appellant who was a local foreman in the service of a company sold milk on their behalf which was found upon analysis to contain 12 per cent of added water. The milk in question had been consigned by one T by railway in two cans each of which bore a label with the words, "Warranted genuine new milk with all its cream on". There was also a written agree-

<sup>1.</sup> Blydon Co-operative Society v. Young, (1916) & J. J. K. B. 417: 115 L. T. 827: 80 J. P. 451: 61 Sol. Jo. 57: 14 L. G. R. 1149: 55 Cox C. C. 580 D. C.

<sup>2.</sup> Mitton v. Jeffries, (1913) S.A.R. 133 Aus. 3. In re Pattabi Chetti, Peritence, 1945 Mad. 446: 1945 M. W. N. 559: (1445) 2 M. L. J. 130: 58 M. L. W. 591: 222 I. C. 33: 47 Cr. L. J. 242.

meat between T & Co. whereby T agreed to supply the company with genuine good milk of the best quality with all its cream on. The appellant stated that the milk in question was served by him in the same state as he got it from the cans but admitted that he had not tested it, though the milk had travelled a distance of 90 miles and a lactometer had been supplied to him for that purpose. Upon the above facts the Justices convicted the appellant under English Act, 1875, Sec. 6. Held: the conviction was right inasmuch as the appellant though a servant was a seller of the milk, also Sec. 25 of the English Act, which exempts a purchaser in certain cases had no application; and even if it had, appellant had not brought himself within its provisions.<sup>1</sup>

Respondent who kept a dairy at E having been summoned under English Act, 1875, Sec. 6, for selling milk which was deficient in fat, set up the defence under English Act, 1875, Sec. 25, that she had purchased the milk as the same as that demanded of her by the purchaser and with a written warranty to that effect and that she had sold it in the same state as when she purch sed it. She had entered into a written contract for the purchase of "16 gallons of pure new milk with all its cream, delivered daily carriage paid to W station" and thile this contract was in force a number of churns of milk arrived at W station consigned to respondent from a station in Derbyshire and were labelled, "Wa ranted pure new milk with all its cream." Purusant to contract, the churns remained at the platform at W station for nearly an hour, when t'rey were taken away by the respondent to her dury. On the same morning part of the milk was sold, which was found to be deficient in fat. It was proved that milk when sold by respondent was in the same state as when received at W station but there was no evidence as to whether it was in the same state as when it was delivered by the seller at the station from which it was sent, or when taken from the train on its arival at W. Held (1) the place of delivery of the milk to respondent was at W station and not the station from which it was sent; (2) the purchase took place when she received the milk in her van at W station, and (3) as she had proved that she sold the milk in the same state as she had received it at the station, she was thereby discharged from the prosecution under English Act, 1875, Sec. 25.2

16. Onus of proof. R spondent's retailers purchused milk from a dairy farme, under a contract by which the latter agreed to supply milk, "carriage paid" with a warranty of quality. The milk was delivered to the prop r raiwa; tation at 543, a. in and was fetched away by respondents at 3:30 a. m. the same morning by their servant. He pouced the contents of the can into two smaller cans and then took them round for distribution among reward m's estomens. He had no authority to sell the mitk to anyboly ex pa members of respondent society who previously ordered a supply. While so delivering the milk the servant sold a small quantity to a non member, the agent of the appellant, an Inspector of Weights and Measures, which was delicient in quality and not of the nature, substance and quality demonded. When charged under English Act, 1875, Sec 6, respondents gave du notice under English Act, 18 9, Sec. 20 (1) that they imended to rely on the above warranty by virtue of English Act, 1875, Sec. 25. The Magistrate found that respondents purchased the milk as the same in nature, substance and quality as that demanded by appellant and that they sold it in the same state as when they received it from the

<sup>1.</sup> Hotchin v. Hindmarsh, (1891) W. R. 607: Q. B. Will: 60 L. J. M. C. 146: 65 L. T. 149: 55 J. P. 775: 39 W. R. 607: 7 T. L. R.513 D. C.

<sup>2.</sup> Sinders v. Salver. (1906) 95 L. T. 812: II. J. P. 3:23 T. L. R. 11:5 L. G. R. 240:21 Cox G. C. 316 D. C.

railway company and had no reason to believe at the time of the sale to the appellant that the milk was otherwise than of the nature, substance and quality demanded. No evidence was offered by respondents before the Magistrates dealing with the period which clapsed between the arrival of the milk at the station and its being fetched by respondents. II ld (1, on the construction of the contract the milk was purchased by the respondents within the meaning of English Act, 1875, when delivered at the railway station, and consequently the burden of showing what happened afterwards to the milk was on them which burden they had not discharged and therefore the defence given by English Act, 1375, Sec. 25 was not substantiated; (2) in selling to appellant respondent's servant had not acted without their authority, but had only misused the actual authority to sell which they had given him and therefore respondents had sold the milk to appell int within English Act, 1875, Sec. 6.1

Respondent was charged under English Act, 1875, Sec. 6, with selling milk not of the nature, substance and quality demanded. It was proved that the milk was delicient in fat. Respondent had purchased the milk under a contract in writing by which a farmer agreed to sell and deliver a quantity of milk, fresh, with all its cream, daily at h station: but the responsibility of the farm r with regard to the quality and condition of milk was to cease upon the arrival of the milk at the station. The milk in question arrived at the station and was fetched away by respondent after the milk had been at the station for a substantial interval of time. Respondent called no evidence to prove that milk had not been tampered with during that interval. Respondent relied upon the warranty as delence to the charge. Held, respondent was not entitled to rely upon the warranty as a defence to the charge as he had not satisfied one of the conditions of Sec. 25 of the English Act, 1875, and proved that he sold the milk in the same state as when he purchased it.2

- 17. Addition of preservative. A purchaser of milk with a written warranty who has added a pres rvative to such milk cannot rely upon the section even though addition of such preservative is not complained of as an adulteration.3
- 18. Defence of warranty where available. A defence of warranty can be pleaded in respect of offences where it is permitted by the St. time.1
- 19. Sale by servants. The warranty must be given to the person relying on it5 but a defendant who is a servant of the person who purchased the article or substance under a warranty is entitled to rely on the defence of the warranty in the same way as his employer would have been entitled to do if he had been the defendant.6
- 20. Warranty how proved. A warranty must be proved by the personal attendance in court of the person by whom or on who e behalf it was given.
  - 1. Elder v. Bishop Aucklan I Co-operative Society Elder v. Bishop Aucklant Co-operative Society Ltd., (1917) 86 L. J. K. B. 1412: 117 L. T. 281: 81 J. P. 202: 33 T. L. R. 401: 61 Sol. Jo. 593: 15 L. G. R. 579: 26 Cox C. C. 1 D. C. Pugh v. Williams, (1917) 86 L. J. K. B. 1407: 117 L. T. 191: 81 J. P. 159: 15 L. G. R. 573: 25 Cox C. C. 768

Hennen v. Long, (1904) 90 L. T. 387: 68 J. P. 237: 2 L. G. R. 437: 20 Cox C. C. 608 D. C.

4. Public Prosecutor v. Parthamethi. (1955) 1 M. L. J. 309.

Higgs v. Spanner, (1907) of L. T. 41: where as a warranty given by A to B, who resold to C without a warranty, was held not to protot C. The purchaser must get variants from his vendor and he must not it in writing, per Channell, J.
Halsbury's Laws of England, 3rd Ed.,

Vol. 17, p. 600.

It is the rule that the warranter must personally attend in court, and it is only in exceptional cases that he should not do so.

It is within the power of a Magistrate to ask for issue of a commission under Sec. 506, Cr. P. C., in cases where he thinks that it is only just and proper that that power should be exercised.

For instance, there might be a case where the Court was satisfied that what the accused said was true, when he said that the warrantor was struck down with paralysis and could not appear, that if his evidence were taken on commission the Court would be satisfied as to the genuineness of the warranty. In such a case there is nothing in law to preclude the Magistrate from asking the District Magistrate for the evidence of this paralytic warrantor to be taken on commission. Cases where the Court would grant such a request would be rare, but there is nothing to prevent the Court asking the District Magistrate to issue a commission for the examination of the warrantor. Cases may fall under two classes: (1) the ordinary case where the personal attendance of the warrantor is dispensed with by the Court. But there is nothing to prevent the Court, in order that it might be "otherwise satisfied" to ask the District Magistrate to arrange for the evidence of a witness to be taken on commission.<sup>1</sup>

Notice of defence. The warranty will only be a defence if the vendor has sent to the Food Inspector or local authority a copy of the warranty with a written notice that he intends to rely on it and spec fying the name and address of the person from whom he received it and has also sent a like notice of his intention to that person. If the warranty was given by a person resident in any area in which this Act is not in force the vendor must prove that he had taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the warranty.

21. Giving false warranty: Every person who, in respect of an article or substance sold by him in respect of which a warranty might be pleaded under the Prevention of Food Adulteration Act gives to the purchaser a false warranty in writing is guilty of an offence unless he proves that when he gave the warranty he had reason to believe that the statements or descriptions therein were accurate. Where the seller gives an express warranty that the article is cent per cent pure, then even though the impurity is negligible, he has committed an offence but he commits no offence if he does not give an express warranty provided he can prove that the small impurity in the articles supplied is due to its reing unavoidably intermixed in the process of production, preparation or conveyance of the article.<sup>2</sup>

If the purchaser demanded pure wheat-flour and the seller professes to sell pure wheat-flour, which turns out on analysis to have even a negligible mixture of barley flour, warranty of quality expressly given is clearly broken and the seller is guilty of an offence. The fact that the amount of adulteration is negligible or is universally tolerated may affect the sentence but cannot affect the conviction.<sup>3</sup>

An information was preferred in the Clerkenwell Police Court by an Inspector of Nuisances for the district charging defendant with having contrary to English Act, 1875, Sec. 27, given a false warranty in writing with respect, to milk sold and delivered by him to a dairy company. The sale, delivery

<sup>1.</sup> Girdharilal Mohanji v. Emperor, 1938 Sind 71: 174 I. C. 512: 32 S. L. 1. 703: 33 Cr. L. J. 477.

Experor v. Puron Med. 19 C., L. J. 686: 1918 Ali, 4.3: 41 Cr. L. J. 686.
 Mithaulal v. Emperor, 1934 All, 439.

and giving of the warranty had all taken place outside the limits of the jurisd.ction of the Clerkenwell Police Court, but the Inspector had, with a view to a prosecution against the dairy company under the English A. t, 1875, Sec. 6, obtained a sample of the milk in the course of its delivery by them, within the jurisdiction of that Court, to purchasers from them, and had submit ed the sample to the Public Analyst of the district who certified that it contained a percentage of added water. Hld, a Metropolitin Police Magistrate sitting at the Clerkenwell Police Court had no jurisdiction under the English Act, 1875, to hear and determine information against defendant.

"It seems to me not open to question that the words 'when the Analyst having analysed article' at the commencement of section1 must be interpreted to mean the official analyst appointed under Sec. 10 of that Act as analyst of all food and drugs sold within the district for which he is appointed and the Inspector of Nuisances appointed for any district or place can only require the Analyst, if there be one, for that district to analyse the suspected samples and give his certificate under Sec. 13 of the English Act. We take it therefore that an Inspector of Nuisances could neither insist upon procuring a sample in a district for which he is not appointed to act for such district give any valid and effectual certificate of the result of his analysis under Sec. 13 of the English Act."2

Appellant was charged under English Act, 1875, Sec. 27, with giving a false warranty in writing to a purchaser in respect of an article of food sold by appellant. Where appellant sold the article he did not know and had no reason to believe that the warranty was false, held that he was not liable to be convicted.3

Respondent, a farmer at S, entered into a contract to supply to a retail purveyor at .1 station new milk with all its cream with a written warranty to that effect. On arrival it was found that the milk had abstracted 16 per cent of its fats and upon the retailer being summoned under Sec. 9 of English Act, 1875, showed that it was part of a consignment received at A station from the respondent with the warranty.

Respondent having been summoned under English Act, 1899, Sec. 20 (6) for having given a false warranty while admitting the abstraction of fat between S and A stations proved to the Magistrate's satisfaction that at and from the handing over of the milk to the railway company at S to the delivery at A he had reason to believe the statement in the warranty were true. The Magistrate thereupon dismissed the summons. Held, the Magistrate was right.4

22. Notice of defence. Appellants w'.o were wholesale dealers in milk were summoned for giving a false warranty contrary to English Act, 1899, Sec. 20 (6). Appellants had given a written warranty to 7 and a sample of the milk sold by J was found deficient in milk fat. The milk from which the sample was taken was supplied to appellants, under a warranty from the farmer who supplied it and the particular consignment also bore a ticket warranting the milk to be pure milk with all its cream. No sample of this consignment

<sup>1. 1875</sup> Act, S. 70.

<sup>2.</sup> Hawkins, J. R. v. Smith, (1806) 1 Q. B. 596: 65 L J. M. C. 104: 74 L. T. 348: 60 J. P. 372: 44 W. R. 492: 12 T. L. R. 501: 10 Sol. Jo. 339: 18 Cox C. C. 307 D. C.

<sup>3.</sup> Derbyshire v. Houliston, (1897) 1 Q. B.

<sup>772: 66</sup> L. J. Q. B. 569: 76 L. T. 624: 61 J. P. 374: 45 W. R. 527: 13 T.L.R. 377: 41 Sol. Jo. 491: 18 Cox. C. C. 609 D. C.

Older v. Leven, (1905) 92 L. T. 200; 69 J. P. 163: 3 L. G. R. 315; 20 Cox C. C. 791 D. C.

was taken by the appellants and nothing was done to it before it was sent to J. Appellants had always found that milk supplied by the farmers was up to warranty. Various precautions were taken by appellants to ensure the purity of the milk supplied to them by farmers, and they had taken samples of thirty-five configurations on the day in question, but no sample of the milk supplied by this particular farmer. The Justices convicted appellants and the conviction was confirmed by quarter sessions. Held, under English Judicial Act, 18 4, (C. 16) the High Court had power to draw the inference from the facts stated in the case, and the Justices ought to have come to the conclusion on the facts that appellant had reason to believe that the statements contained in the warranty were true, and therefore the conviction must be quashed.

- 23. Successive warrantees. The case of successive warrantees however does not fall within the statutory provisions; thus if A sells to B with a warranty and B resells to C with a like warranty, though C on being prosecuted for adulteration may rely successfully on the warranty from B, B on being prosecut C for giving a false warranty cannot plead as a substantive defence the warranty he received from A.
- 21. Misapplication of war anty. A defendant in any proceeding under the Prevention of Food Adulteration Act who wilfully applies to any article or substance a warranty or report of analysis given in relation to any other article or substance is guilty of an offence.
- 25. Who may be liable. A joint stock company incorporated under Companies Act can be convicted of an offence of giving warranty.<sup>3</sup>

Conviction of a person who is not himself the actual vendor. In order to justify the conviction of a person who is not himself the actual 'vendor' it is necessary to prove the existence of circumstances from which it can reasonably be inferred that he was aware of adulteration. A shopkeeper who does not himself sell the ghee on behalf of the owner but allows the owner to sell it on the premises of his shop, the consideration for such lincence being a commission fixed by reference to a percentage of sale price cannot be said to be actually taking part in the sale, unless there is evidence to show that he exercised any control over the vendor or had any property or other interest in the ghee sold by the vendor. The shopkeeper is a mere licensor of a right to sell gloe on his premises. If the commission agent of this sort who has a shop at a particular place allows another person to offer ghee for sale at his shop and in his presence and with a profit to himself the only reasonable view to take on the facts is that the owner of the shop in exposing the ghee for sale equally and jointly with the owner of the ghee who is the vendor.4 R was a commission agent and people used to bring ghee to his shop and sell through him. R used to charge commission from them. On 4th October, 1935, one D brought some ghee at his shop and was selling there. In he meantime a Sanitary Inspector came there and purchased ghee from D. On analysis this glee was found to be impure as it had a small proportion of fat or oil for ign to ture ghre. Both D and R were tried and convicted. It was contended by R that it was D from whom the Inspector purchased the sample of the and that he was not liable because D did the selling and was present. It was held that the act penalises the selling or exposing for sale, etc. Although the actual selling may have been done by D, the exposing for sale was done

Diary Supply Co. Ltd. v. Houghton, (1911)
 106 L. T. 220: 76 J. P. 13: 23 T. L. R.
 94: 10 L. G. R. 208: 20 Cox C. C. 704
 D. C.

D. C. 2. *Hilbert Level of Education* and Ed. Vol. 17, p. 601.

<sup>3.</sup> Chuter v. Freeth & Peacock, (1911) 2 K. B.

<sup>832: 80</sup> L. J. K. B. 1322: 105 L. T. 233: 75 J. P. 430: 27 T. L. R. 467: 9 L. G. R. 1055: 22 Cox C. C. 573 D. C.

Municipal Board, Bareilly v. Rom (\*\*).
 1910 Gal. 517: 1940 A. W. R. 482:
 1940 A. L. J. 653: (1940) All. 643.

by R because the shop belonged to R and goods could not have been exposed for sale without his consent. It was R who allowed the whom to be exposed for sale at his shop and who allowed it to be sold at his shop, so R abetted was guilty of abetment.

20. (1) No prosecution for an offence under this Act shall Cognizance and be instituted except by, or with the written trial of offence. consent of, the State Government or a local authority or a person authorized in this behalf by the State Government or local authority:

Provided that a prosecution for an offence under this Act may be instituted by a purchaser referred to in Sec. 12, if he produces in court a copy of the report of the Public Analyst along with the complaint.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

# SYONPSIS

1. Power of local with rity to procede.

2. Prosecution by private person.

3. Prosecution without consent of local authority.

4. Sanction.

5. Authority to sanction prosecution in notified area.

6. Power of the Food Inspectors appointed under U. P. Pure Food Act, 1950, to breach pronoution.

7. Power of Sanitary Inspector authorised under Madras Prevention of 14.

Adulteration Act to lawsch prosecution.

Jurisdiction of Court.
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10. Place of inquiry or trial.

11. No day is east upon complaining authority to file complaint in right Court.

12. Prosecutor.

13. Contain on admission of adultera-

14. Belated prosecution.

- 1. Power of local authority to prosecute. Where the Prevention of Food Adulteration Act imposes duties of the enforcement, clearly there is also a right of prosecution. A prosecution is forbidden by Sec. 20 of the Act to be instituted without the order or consent in writing of the State Government, or a local authority or a person a thorised by the State Government or a local authority in this behalf.
- 2. Prosecution by private persons. Any private purchaser of an article of food may take proceedins against the offender without consent of any authority if he obtains a copy of the report of the public analyst and produces it in the Court along with the complaint.
- 3. Prosecution without consent of local authority. A prosecution launched without a valid sanction is a nullity.<sup>2</sup> But in Samp Lal v. Empiror,<sup>3</sup> it was held that if prosecution is instituted without the order or consent in writing of the State Government or a local authority or a person authorised by the State Government or local authority in this behalf and if the p occedings are irregular for that Sec. 537 of the Code of Criminal Procedure provides sufficiently to cure the irregularity.<sup>4</sup>

Emperor v. Ramgopal, 1936 All. 865: 1936
 A. L. J. 1037: 1936 A. W. R. 875.

 Girraj Kishore v. The State, 1957 All. 129;
 1936 Pat. 636: 17 P. L. T. 953: 166 I. C.
 4. 1936 Pat. 636: 17 P. L. T. 953: 166

Girraj Kishore v. The State, 1957 All. 129;
 Basdeo Agarwala v. Emperor, 1945 F. C.
 16: 46 Cr. L. J. 510.
 4. 1936 Pat. 636: 17 P. L. T. 953: 166
 I. C. 206.

4. Sanction. A sanction to prosecute by the District Medical Officer who is authorised by the Municipal Board to make complaints under the Municipalities Act is not a proper sanction in accordance with the provisions of Prevention of Adulteration Act. A sanction by a person who is authorised by the Municipal Board to di eet prosecution under the Act is necessary.1

It is necessary that the Inspector shall be authorised for laying complaints. When a complaint is instituted without such authorisation, conviction based on it cannot stand.2

The powers to sanction prosecutions under the Prevention of Adulteration Act may be delegated.3

Where a District Health Officer delegates his powers and duties to the Executive Office of a Panchayat, a prosecution instituted by the latter is valid.4

A complaint filed by an Executive Officer of a Municipal Board duly authorised by the Municipal Board to institute prosecutions under the Act is not illegal merely because on the date on which samples were obtained he had not been so authorised,5 such authorisation may be made at any time before the complaint is instituted.

The Chairman of the Municipal Board authorised the Medical Officer to institute cases under the Act. The Medical Officer ordered prosecution for an offence under the U. P. Prevention of Adulteration Act. The complaint was dismissed by a first class Magistrate with the following order: "No sanction under the Adulteration Act. Case dismis d." A revision against this o der was filed before the Additional District Magistrate. He referred the case to the High Court with the recommendation that the order of the Magistrate be quashed. It was true that the copy of the order of the Chairman did not accompany the complaint but no facilities were allowed to the Medical Officer of Health to show that he was duly authorised to prosecute the accused. Held, that under these circumstances Chairman of the Municipal Board was competent to authorise the Medical Officer of Health to institute cases under the Prevention of Adulteration Act. That there was no trial of the case so far on merits and that therefore the case should be retried according to law by a competent Magistrate.6 Bengal Municipal Act, 1884, does not empower the chairman to sanction prosecution.7

Prosecution of an accused under the Bengal Food Adulteration Act without any order or consent in writing of the Municipal Commissioners and his subsequent acquittal under Sec. 245, Criminal Procedure Code, cannot stand in the way of subsequent trial on the same facts for the same offence.8 A verdic of acquittal is no doubt immune from challenge, but it only when accused has been "tried" and acquitted of an offence that the immunity arises. Where no question of immunity can possibly arise, the previous acquittal cannot operate as a bar to the subsequent trial.9

In view of the provisions of Sec. 50 (e), U. P. Municipalities Act, 1916, it would make no difference to the legality of the sanction that the Board

1. Lala Lakhpat Rai v. State, 4 A. I. Cr. D. 6. Municipal Board, Brindaban v. State, 1950 554: 5 D L. R. All. 298.

Dhana Ram Ganga Ram v. Municipal Committee; D. E. Khan, 1935 Pesh. 24: 36 Cr. L. J. 624: 154 I. C. 873. 1949 2 M. L. J. 408.

1. P. Mr. Prince v. B. Nagamma, 1950
 M. M. S. 1912
 M. L. J. 403: 1949
 M. W. N. 571: 51 Cr. L. J. 261.
 J. J. 1918
 All. 199: 16
 A. L. J. 631: 40 J. C. 514: 19 Cr. L. J.

738: 40 All. 661.

A. L. J. 450: 1952 All. 209.

Raghunath Mody v. Kurseong Municipality, 1923 Cal. 561: 76 I. C, 394. 8.

P. Bannerjee v. Bepin Behary Ghose, 1926 Cal. 691: 43 C. L. J. 110: 30 C.W.N. 382: 27 Cr. L. J. 751: 95 L.C. 79. Ibid: Emberor v. Umer-ud-ke, 31 All. 317: 6 A. L. J. 262; Girnej Kishere v. State, 1957 All. 129.

may have exp. essed itself against prosecution. In such a case the Chairman is the Board and his act binds the Board, however much against the wish of the Board which cannot interfere. The policy of the Muncipalities Act was to enable certain functions of the Board to be exercised by the Chairman so as to avoid the delay necessitated by reference of the matter to the Board. The Prevention of Food Adulteration Act, which is a general provision as to sanctions of prosecution for adulteration cannot control. Sec. 50 (e), Municipalities Act, for two reasons. One is that a general enactment cannot affect a special one; and the other reason is that the latter Act was passed later than the former one.1

- 5. Authority to sanction prosecution in notified area. In the case of a notified area to which the provisions of the Prevention of Food Adulteration Act have been extended the local authority which can sanction a prosecution means the notified area committee.<sup>2</sup>
- 6. Power of the Food Inspectors appointed under U. P. Pure Food Act, 1950, to launch prosecution. In State v. Mondehand, the elleged offence was committed on the 21st of July, 1955. The pro-ecution was launched by the Assistant Medical Officer of Health for an offence under Sec. 16 read with Sec. 7 of the Prevention of Food Adulteration Act (XXXVII of 1954), prior to the enforcement of the rules made by the State Governmen' under this Act. It was held that the Assistant Medical Officer of Health could not institute a complaint against any one in view of Sec. 20 as the State Government had not authorised him by that date to presecute any person for an offence under the Act. It was also held that the contention that by virtue of Sec. 25 (2) of the Prevention of Food Adulteration Act the power which the Assistant Medical Officer of Health as Food Inspector exercised with respect to persons contravening the provisions of U. P. Pure Food Act and rules thereunder could be exercised by them under the Prevention of Food Adulteration Act was not tenable as Food Inspectors appointed under U. P. Pure Food Act, 1950, were conferred the power to prosecute by the Act itself. Sec. 34 empowered them to prosecute. When Sec. 34 of that Act was repealed in view of the repeal of the entire Act this power of Food Inspectors came to an end. The notification dated 5th February, 1953, appointing Health Officers and others to be Food Inspectors may serve the purpose of appointing them Food Inspectors under the Prevention of Food Adulteration Act but this notification neither gave them the power to prosecute under the U. P. Pure Food. Act nor could it be deemed to confer this power under the Prevention of Food Adulteration Act. Consequently a pro ecution by the Assistant Medical Officer of Health of the accused was bad in law.
- 7. Power of Sanitary Inspector authorised under Madras Prevention of Adulteration Act to launch prosecution. A Sanitary Inspector authorised to launch prosecution under the Madras Prevention of Adulteration Act, 1918, is not competent to launch prosecution under Sec. 20 of he Central Prevention of Food Adulteration Act, 1954.4
- 8. Jurisdiction of Court. Section 5 of the Code of Caiminal Procedure runs as under:
  - (1) All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

Kishan Lal v. Emperor, 1928 All. 254: 26
 A. L. J. 239: 108 I.C. 148: 29 Cr. L. J. 340

<sup>2.</sup> Shoran Singh v. Emperor, 1948 All. 402: 1948 A. W. R. (H. C.) 146: 1948

A. L. J. 558: 49 Cr. L. J. 681.

 <sup>1957</sup> All. 343.
 Cannonore Milk Supply Co-operative Society; In re, (1956) 2 M. L. J. 465.

(2) All offence, under any other law shall be investigated, inquire! into, tried and otherwise dealt with according to the same provisions namely the provisions hereinafter contained as mentioned in Sec. 5(1), but subject to any enactment for the time being in force regulating the manner or place of investigating, enquiry into, trying or otherwise dealing with such offences.

Again Sec. 29 (1) of the Code of Criminal Procedure states, "Subject to the other provisions of this Code, any offence under any other law shall when any Court is mentioned in this behalf in such law be tried by such Court."

The effect of these two sections read with Sec. 20 of the Prevention of Food Adulteration Act, 1954, is thus:

Specific offences are created by the Prevention of Food Adulteration Act. The courts which have jurisdiction to try such offences are also specified in Sec. 20 of the Prevention of Food Adulteration Act. Therefore having regard to the language of Sec. 29 (1), Criminal Procedure Code, it would appear that the offences created by Prevention of Food Adulteration Act must be tried only by the Courts of the Presidency Magistrate or of Magistrates of the first class which are the courts mentioned in Sec. 20 of the Prevention of Food Adulteration Act. Where a specific offence is created by an Act and the Court which is to try the person charged with this specific offence is also mentioned in that particular enactment, it is only such a court that can ry the offence.1

9. Trial of offences. Where an offence is one under a special Act and a complete procedure is provided in that enactment for the investigation, inquiry or trial of such offence it is that procedure that must be followed and not the one provided by the Criminal Procedure Code.2 But where an enactment does not prescribe any special procedure for investigation, etc. of such offences the procedure laid down in Criminal Procedure Code must be followed.3

The Prevention of Food Adul eration Act. 1954, which is a special Act prescribes no procedure for the trial of offences under it. Hence by reason of Sec. 5 (2), Criminal Procedure Code, such offences can be dealt with according to the procedure prescribed in the Criminal Procedure Code, subject to the exceptions indicated by sub-sections (4) and (5) of Sec. 13 and sub-section (3) of Sec. 19 of the Act which are reproduced below;

"Sub-section (4) of Sec. 13. Where a certificate obtained from the Director of the Central Food Laboratory under sub-section (2) is produced in any proceedings under this Act or under Secs. 272 to 276 of the Indian Penal Code Act XLV of 1860) it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis."

"Sub-section (5) of Sec. 13. Any document purporting to be a eport signed by a Public Analyst unless it has been superseded under sub-section 3, or any document purporting to be a certificate signed by the Director of Central Food Laboratory, may be used as evidence of the facts s at d there'n in proceeding under this Act or under Secs. 272 to 276 of the Indian Penal Code (Act XLV of 1860):

1. Ishan Chandra v. Manmatha Nath, 1923 Cal. 339; Samila v. The Grown, 1917 P. R. No. 38 (Cr.), p. 142:1917 Lah. 138:18 Cr. L. J. 927; Lah haladataaya v. Naasimachary, 21 I. C. 685:14 Cr. L. J. 637; Emberer v. M. hamad. Man, 33 All. 87:

7 I. C. 389.

Reg. v. Aba Apraji, (1872) Rat. Un. Cri.

Cas. 62. See Sec. 5 (2), Cr. P. C. : Manua La. v. Emperor, 1925 Oudh 1: 25 Cr. 1. 1. 49.

Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein."

Sub-section (3) of Sec. 19 which d als with special plea, which can be

taken in defence runs as under:

"Any person by whom a warranty as is referred to in sub-sec. (2) is alleged to have been given shall be entitled to appear at the hearing and give evidence."

Where a special Act prescribes a special provedure only for ome netters its provisions must apply in respect of these matters and the provisions of the Code of Criminal Procedure will apply for the matters on which the special Act is silent.

- 10. Place of inquiry or trial. Secs. 177, 179, 180, 132, 183 and 185 of the Criminal Procedure Code, which lay down the place of inquiry or trial of the offences committed under the Prevention of Food Adulteration Act, 1954, are reproduced below:
- Sec. 177. Ordinary place of inquiry and trial. Every offence shall ordinarily be enquired into and tried by a Court within the local limits of whose juri-diction it was committed.
- Sec. 179. Accused triable in district where act is done or where consequence ensues. Where a person is accused of the commission of any offence by reason of anything which has been done, and of any emerguence which has ensued, such offence may be enquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued.
- Illustrations. (a) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired unto or tried by X or Z.
- (b) A is wounded within the local limits of the jurisdiction of Co rt X, and is during ten days within the local limits of jurisdiction of Court T, and during ten days more within the local limits of jurisdiction of Court Z, unable in the limits of the jurisdiction of either Court T, or Court T, to follow his ordinary pursuits. The offence of causing grid tens built to T may be enquired into or tried by T, T, or T.
- (c) A is put in fear of injury within the local limits of the jurisdiction of Court X and is thereby induced, within the local limits of the jurisdiction of Court Y, to delver property to the person who put him in fear. The offence of extortion committed on A may be inquired or tried either by X or Y.
- (d) A is wounded in the Native State of Baroda and dies of his wounds in Poona. The offence of causing A's death may be inquired into and tried in Poona.
- Sec. 180. Place of trial where act is offence by reason of relation to the other. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence, if the does were capable of committing an offence, a charge of the first mentioned offence may be inquired into or tried by a Court within the local limits of whose juri diction either act was done.
- Illustrations. (a) A charge of abetment may be inquired or tried either by Court within the local limits of whose jurisdiction the abetment was committed or by the Court within the local limits of whose jurisdict on the offence abetted was committed.

- (b) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.
- (c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose ju isdiction the wrongful concealing or by the Court within the local limits of whose jurisdiction the kidnapping took place.
- Sec. 182. Place of inquiry or trial where scence of offence is uncertain or not in one district only or where offence is continuing or consists of several acts. When it is uncertain in which of the several local areas an offence was committed or

where an offence is committed partly in one local area and partly in another, or

where an offence is continuing one, and continues to be committed in more local areas than one; or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

- Sec. 183. Offences committed on a journey. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdic ion the offender or the person against whom, or the thing in respect of which, the offence was committed passed in the course of that journey or voyage.
- Sec. 185. High Court to decide in case of doubt, district where inquiry or trial shall take place. (1) Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire or try any offence it shall be decided by that High Court.
- (2) Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence, the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced may direct the trial of such offender to be held in any Court subordinate to it and if it so decides all other proceedings against such person in respect of such offence shall be discontinued. If such High Court, upon the matter of having been brought to its notice, does not so decide, any other High Court, within the local limits of whose appellate criminal jurisdiction such preceedings are pending, may give a like direction, and upon its so doing all other such proceedings shall be discontinued.
- 11. No duty is cast upon complaining authority to file complaint in right Court. It is not a duty cast upon the complaining authority to satisfy itself that it is applying to the right Court. All it has to do is to tile a complaint in time.1
  - 12. Prosecutor. The pros cutor need not always be local authority.
- 13. Conviction on admission of adulteration. When the prosecution is for alleged exposure of adulterated milk for sale, an admission that the milk was adult rated does not amount to an admission that the milk had been exposed for sale, and therefore an accused cannot be convicted on such admission. The term 'sale' is very wide. Still mere possession of an adulterated article will not amount to sale.

<sup>1.</sup> Public Prosecutor v. Chinte Venkatarayuddu. 1936 Mad. 471.

Hira Lal v. Emperor, 1936 All. 395.
 Mahamada v. The State, 1952 Ajmer 4.

- 14. Belated prosecution. The Madras Prevention of Food Adulteration Act, 3 of 1918, did not permit belated prosecution.<sup>1</sup>
- 21. Notwitstanding anything contained in section 32 of Magistrate's power to the Code of Criminal Procedure, 1898 Act V impose enhanced of 1898, it shall be lawful for any Presidency penalties.

  Magistrate or any Magistrate of the first class to pass any sentence authorized by this Act, in excess of his powers under section 32 of the said Code.

### SYNOPSIS

1. Scope.

one trial.

2. Sentences in cases of conviction of several offences at

3. Imprisonment in default of fine.

- 1. Scope. Under section 32 of the Code of Criminal Procedure, 1893, the Court of the Presidency Magistrates and of Magistrates of the first class can pass the following sentences, namely—
  - (1) inprisonment for a term not exceeding two years including such solitary confinement as is authorized by law; and
  - (2) fine not exceeding two thousand rupees.

Ordinarily a Magistrate of the first class cannot pass a sentence greater than that allowed by that section. But under section 16 of this Act the maximum punishment prescribed for a third and subsequent offence is fine (unlimited, and imprisonment for four years.

It is, therefore, provided in section 21 of this Act that a Presidency Magistrate or a Magistrate of the first class can exceed the limit prescribed by section 32 of the Code of Criminal Procedure and pass a sentence which he is not authorized to pass under that section.

- 2. Sentences in cases of conviction of several offences at one trial. (1) Where a person is convicted at one trial of two o, more offences, the Court may, subject to the provisions of section 71, Indian Penul Code, sentence him for such offences, to the several punishments pre-cribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence one after the expiration of the other in such order as the Court may direct unless the Court directs that such punishment shall run concurrently.
- (2) In case of consecutive sentences, it shall not be nice sary for the Court by reason only of the agreegate punishment for a veril off mees being in excess of punishment which it is competent to inflict on conviction of single offence, to send the offender for trial before a higher Court:

#### Provided as follows:

(a) in no case shall such person be sentenced to imprisonment for a

longer period than fourteen years;

(b) if the case is tried by a Magistrate only under ection 31 the aggregate punishment shall not exceed twice the amount of imprisonment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.<sup>2</sup>

In every case of an offence punishable with impaisonment as well as fine, in which the offender is sentenced to fine, whether with or without imprison-

ment,

<sup>1.</sup> Public Prosecutor, Madras v. Satnarayana Murty, 1951 M. W. N. 754: (1951) 2 M. L. J. 301. See also Venkataramanayya,

In re, (1954) 2 M. L. J. (Andh) 176. 2. Section 35. Cr. P. C.

and in every case of an offence punishable with imprisonment or fine,

or with fine only in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to die t by the sentence that in default of payment of fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of my other in prisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.1

The imprisonment, which is imposed in default of payment of fine, shall

terminate whenever that fine is either paid or levied by process of law.2

The fine or any part thereof which remains unpaid may be levied at any time within six years after the passing of the sentence . . . . ; and the death of the offender do s not discharge from the liability any property which would, after his death, be legally liable for his debts.3

3. Imprisonment in default of fine. (1) The Court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorized by law in case of such default:

Provided that—

- (a) the term is not in excess of the Magistrate's power under this Code;
- (b) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence the period of imprisonment awarded in default of payment of fine shall not exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of fine.
- (2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awarded by the Magistrate.4
- 22. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in Protection of action good faith done or intended to be done under taken in good faith. this Act.

#### SYNOPSIS

1. English Law.

2. Scope.

3. Good faith.

1. English Law. Section 91 of the English Food and Drugs Act, 1938, which protects officers of a local authority from personal liability in respect of acts done by them in execution of that Act runs as under:

Section 94. Food and Drugs Act, 1938: Protection for officers of local authority or county council acting in the execution of their duty-

(1) An officer of a local authority shall not be personally liable in respect of any act done by him in the execution or purported execution of this Act and within the scope of his employment if he did that act in the honest belief that his duty under this Act required or entitled him to do it:

Provided that nothing in this sub- ection shall be construed as relieving a local authority from any liability in respect of acts of their officers.

(2) Where an action has been brought against an officer of a local antho its in respect of an act done by him in the execution or purported execution of this Act and the circumstances are such

Section 64, I. P. C.

<sup>2.</sup> Section 68, I. P. C.

<sup>3.</sup> Section 70, I. P. C. 4. Section 33, Cr. P. C.

that he is not degally entitled to require the authority to indemnify. him, the authority may, nevertheless, indemnify him against the whole or a part of any damages and costs which he may have been ordered to pay or may have incurred, if they are satisfied that he honestly believed that the act complained of was within the scope of his employment and that his duty under this Act required or entitled him to do it.

(3) The provisions of this ection shall apply in relation to a country council and the officers thereof as they apply in relation to a local

authority and the officers thereof.

The effect of this section is to render the local authority and not individual officers liable in respect of durages ari ing from the enforcement of the Act of 1938.

- 2. Scope. This section affords protection to all Food Inspectors, Public Analysts and other functionaries from presenttion and hurasyment for anything which is done in good faith done or intended to be done under the authority of this Act.
- 3. Good faith. Section 52 of the Indian Penal Code defines 'good faith' as under:

"Nothing is said to be done or believed in good faith' which is done or believed without due care and attention."

This definition of 'good faith' is merely a negative one. It does dot define good faith but not content by stating what it is not. The positive aspect of the term is presented by the General Clau es Act in which is thus defined:

"3 (22) A thing shall be deemed to be done in 'good faith' where it is in fact done honestly, whether it is done negligently or not."

This definition in General Clauses Act is the a rhat in reproduction of the definition of the term as given in the English Bills of Exchange Act, 18-2, and the Sales of Goods Act, 1893.

Good faith plays an import nt part in the law of clime, and its presence is ordinarily a sufficient answer to a charge of criminality in many cases.

The definition given in the Penal Code is, ther fore, the keynote of all

sections in which good faith enters.

It will be observed that section 52, I. P. C., defines 'good faith' by exclusion. It says that an act done without due care and attention shall not be deemed to have been done in good faith. That section makes no reference to the moral elements of Louesty and right motive which are involved in the popular significance of good faith which are prominent in the positive definition enacted in other Acts of the Levislature. It therefore follows that while an honest blunderer acts in 'gord faith' within the meaning of the General Clauses. Act, an honest blunderer can never act in good faith within the meaning of the Code, for b ing 'negligent', he has not acted with due care and attention. Absence of good faith within the meaning section 52, I. P. C., means simply carelessness or negligence, want of due care and caution and docs not imply an idea of dishonesty.2 In the Barma case of Bux Show Meah? it was hold that an accused who lets his coolies work outside the area covered by his licence without taking precaution to know whether that area was covered by his licence or not cannot be said to be acting in good faith though there may be no element of dishonesty in his conduct. In the Oudh case of Pragi the

<sup>1.</sup> Act X of 1897. No definition of the I. C. 135: 1942 Oudh 256: 43 Cr. L. term existed in earlier Acts. J. 518: 1942 C. W. N. 74.

<sup>2.</sup> Bux Sheo Meah Chowdhury v. The King, 1938 Rang. 350: 39 Cr. L. J. 985; Prag v. The King, 17 Luck. 591: 199 Ibid. Ibid.

Collector had authorised a certain Amin to attach a particular property, but the Amin returned the warrant to the Tehsildar, his immediate superior, on account of resistance offered to the attachment. The Tehsildar, wheever, without returning the warrant to the Collector, on his own initiative ordered another limin to attach the property. This attempt to attach the property led to fight between resisters and the Tehsildar and the second Amin. It was held that though he may have acted with the best of intentions, the Tehsildar lad not acted in good faith because if he had considered the matter for a moment he could have realized that it was not within his power to authorize any other hurk Amin to execute the warrant. Similarly, it has been held by the same Court in another case1 that where an Amin who executes a warrant is aware of the fact that the date fixed for execution of the warrant is over he cannot be said to be acting in good faith and the person whose property is sought to be attached in execution of the warrant has a right of private defence of his property. By the mere fact that a Sub-Inspector goes to a village dressed up in his uniform to arrest the accused, he cannot be said to be acting in good faith, where as a matter of fact, he is acting in entire bad faith and in the most illegal and reprehensible manner. It will thus be seen that the two definitions approach the question from two different standpoints, and there is nothing common between them. For while the general definition condones negligence and carelessness, if only there was honestly, the Code regards honesty as immaterial and the presence of 'care' and 'intention' as all in all. In this respect, the definition would appear to closely correspond with English notion of "reasonable and probable cause" or "reasonable and justifiable cause" as used in criminal jurisprudence.

The law does not expect the same degree of care and attention from all persons. It varies with the position they occupy.2 In this sense the question of 'good faith' as always a question of fact to be determined in accordance with the proved facts and circumstances of each case. The standard of due care and attention is not the standard of the hypothetically "reasonable man". But it is the standard of the man whose good faith is on trial. The Court has to see whether he circumstanced as he was, had he exercised the care and attention which might be expected of him. It is therefore irrelevant to say that, in such a case any other man would have acted differently. It may be so but the question is not what another man would have done, but what the accused did at the time and what more he could have done but which he failed to do. As Batty, J., remarked in a case 'good faith' requires nut indeed, logical infallibility but due care and attention. But how far erroneous actions or statements are to be imputed for want of ue care and c ution must in each case be considered with reference to general circumstances and capacity and intelligence of the per on whose conduct is in question. It is only to be expected that the honest corclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectorian zeal and untrained to habits of reasoning.3

23. (1) The Central Government may, after consultation with the Committee and subject to the condition Power of the Conof previous publication, make rulestral Government to make rules.

Raghubir v. The King, 17 Luck. 314:1942
 Ough 57: 106 J. C. 731: 43 Cr. L.
 J. (1) 11 O. W. N. 1175.
 Bhowoo Jivaji v. Mulji Dayal, 12 Bom.

<sup>377;</sup> Po Rye, (1940) R. 109. 3. Emperor v. Abdul Wohn b. 31 Bom. 2.3: 9 Bom. L. R. 230: Mohd. Gal v. Heji Fazley, 56 C. 1013.

- (a) specifying the articles of food or classes of food for the import of which a licence is required and prescribing the form and conditions of such licence, the authority empowered to issue the same and the fees payable thereof;
- (b) defining the standards of quality for, and fixing the limits of variability permissible in respect of, any article of food;
- (c) laying down special provisions for imposing rigorous control over the production, distribution and sale of any article or class of articles of food which the Central Government may, by notification in the official Gazette, specify in their behalf including registration of the premises where they are manufactured, maintenance of the premises in a sanitary condition and maintenance of the healthy state of human beings associated with the production, distribution and sale of such article or class of articles;
- (d) restricting the packing and labelling of any article of food and the design of any such package or label with a view to preventing the public or the purchaser being deceived or misled as to the character, quality or quantity of the article;
- (e) defining the qualifications, powers and duties of food inspectors and public analysts;
- (f) prohibiting the sale or defining the conditions of sale of any substance which may be injurious to health when used as food or restricting in any manner its use as an ingredient in the manufacture of any article of food or regulating by the issue of licences the manufacture or sale of any article of food;
- (g) defining the conditions of sale or conditions for licence of sale of any article of food in the interest of public health;
- (h) specifying the manner in which containers for samples of food purchased for analysis shall be sealed up or fastened up;
- (i) specifying a list of premissible preservatives, other than common salt and sugar, which alone shall be used in preserved fruits, vegetables or their products or any other article of food as well as the maximum amounts of each preservative,

- (j) specifying the colouring matter and the maximum quantities thereof which may be used in any article of food;
- (k) providing for the exemption from this Act or of any requirements contained therein and subject to such conditions, if any, as may be specified, or any article or class of articles of food;
- (1) prohibiting or regulating the manufacture, transport or sale of any article known to be used as an adulterant of food;

(m) prohibiting or regulating—

- (i) the addition of any water, or other diluent or adulterant to any article of food;
- (ii) the abstraction of any ingredient from any article of food;
- (iii) the sale of any article of food to which such addition or from which such abstraction has been made or which has been otherwise artificially treated;
- (iv) the mixing of two or more articles of food which are similar in nature or appearance;
- (n) providing for the destruction of such articles of food as are not in accordance with the provisions of this Act or of the rules made thereunder.
- (2) All rules made by the Central Government under this Act shall, as soon as possible after they are made, be laid before both Houses of Parliament.

#### SYNOPSIS

1. Memorandum of Ministry of Health.

3. General powers to make rules.

2. Rules framed by the Central Government.

4. Rules under the Act: Essential thing.5. Rules under the Act: Validity.

- 1. Memorandum of Ministry of Health. The following explanatory memorandum in respect of subordinate legislation has been added by the Ministry of Health.
- Clause (a). The articles of food or classes of food, for the import of which licence is required, have to be determined by the Government from time to time. A complete and exhaustive list of all articles of food which may no doone sort of import control cannot be drawn up with certainty at ples not as the matter requires detailed examination of a number of factors involved. The import of foods, mostly processed foods, will depend on the food situation in the country and the quality of products available in the oversels market. It will be necessary to lay down specifications of processed foods like breakfast foods, cereals, preserved fruit, jellies, jams, cream or

dairy products in order to prevent the entry of products of inferior quality into the country.

Clause (b). Standards of quality may have to be defined for certain foods for detecting adulteration. To prescribe in the Bill itself definitions for each item of food, such as milk, butter, ghee, gingelly-oil, ice-cream, etc., and their standards, even if necessary, would have been inelegant and would have involved Parliament into an unnecessary examination of the minor technical details involved in such definitions.

Clauses (c) and (d). The powers contemplated in the clauses are in relation to matters of detail the incorporation of which in the main Act would have unnecessarily increased the bulk of the enactment.

Clause (e). It is not possible to define fully the powers and duties of Food Inspectors and Public Analysts because they might differ in maters of details between one local authority and another or between one State and another. In a small municipality, the duties of the Food Inspector may be entrusted to the Sanitary Inspector or the official in charge of Birth and Death Register, whereas in a big Municipal Corporation, these duties may be entrusted to a medicial man. Similarly, the duties an equalifications of Public Analysts may differ in different States. These differences are of a minor nature and do not affect the general principles embodied in the Bill.

Clauses (f), (g), (h) and (n). The provisions of these clauses relate to matters of technical and administrative details which might well be left to Government to settle.

Claus 3 (i) and (j). With the rapid development of scientific technology, the views on preservatives may undergo constant changes in the light of developing knowledge. Similarly, quite a number of flavouring and colouring matters have already been introduced and some others are in the offing. Consequently, powers in this behalf should be sufficiently flexible.

Clauses (k), (l) and (m). The matters within these clauses relate either to administrative details or have to be reviewed from time to time on the advice of experts and rules regarding them are unsuitable for inclusion in the main legislation.

2. Rules framed by the Central Government. In exercise of the powers conferred by sub-sec. (2) of sec. 4 and sub-sec. (1) of Sec. 23 of the Prevention of Food Adulteration Act, 1954 (37 of 1954) the Central Government after consultation with the Central Committee for Food Standards has framed the rules called the Prevencion of Food Adulteration Rules, 1954, which are dealt with at the end of this book.

3. General powers to make rules. This section confers powers on the Government of India to make rules regarding matters mentioned in clause (a) to (m) of sub-sec. (1).

The Government of India has framed rules under this ection called

Prevention of Food Adulteration Rules, 1955.

4. Rules under the Act: Essential thing. The essential thing is t'at the rules under the Act should refer to deficiencies in or additions to articles of food that is to say they must lay down the absence of something or the procedure of some thing.

5. Rules under the Act: Validity. Statutory rules if validly made within the powers conferred by the Act must be regarded as part of the Act

itself and made with full authority of the Legislature.2

Navoring i Lil Mirwari v. Chairman, Militapur Muni ip lity, 1940 Cal. 324 : 2. Salegram v. Empto 23 Pat. 22. 190 I. C. 186: 44 C. W. N. 615 : 44

Rules made under the Act which prescribe that they shall be laid before Parliament are to be judically noticed and mut be treated for all purposes of construction or obligation or otherwise exactly as if they were in the Act. If there is a conflict between one of these rules and a section of the Act, it must be dealt with in the same spirit as a conflict between two sections of the Act would be dealt with. If reconciliation is impossible, the subordinate provision must give way and probably the rule would be treated as subordinate to the section.1

Rules made under statutory powers enforceable by penalties are construed like other provisions encroaching on the ordinary rights of persons. They must on pain of invalidity, be not unreasonable,2 nor in excess of the statutory power authorising them, nor repugnant to that statute or to the general principles of law.3

The rules framed under a statute cannot govern or control the words of a statute.4

The law expressly requires that the rules framed under the Act shall be consistent with the Act. The Courts cannot put a forc d or unnatural construction upon the language of the Act in order to bring it into conformity with a rule.5

Where the Legislature creates special right and wrongs it can also provide the appropriate remedies to enforce those rights or remove those wrongs and it can appoint the forum in which the appropriate remedy may be pursued. The procedural provisions of the Act or of the Rules framed under the Act are nothing more than descriptive mode in which the remedy should be sought.6

(1) The State Government may, after consultation with the Committee and subject to the condi-Power of State tion of previous publication, make rules for the Government make rules. purpose of giving effect to the provisions of this Act in matters not falling within the purview of Sec. 23.

(2) In particular, and without prejudice to the generality

of the foregoing power, such rules may-

(a) define the powers and duties of the Food (Health) authority and local authority and jurisdiction of food inspectors and public analysts;

(b) prescribe the forms of licences for the manufacture for sale, for the storage, for the sale and for the distribution of articles of food or any specified articles of food or class of articles of food, the form of application for such licences, the conditions subject to which such licences may

1. Maxwell on Interpretation of Statutes, 8th Edition. pp. 46-47; V. Appalla Narisimha Raju v. Biundavona Sahu, 1943 Mad. 617: (1943) 2 M. L. J. 31: 214 I. C. 282.

Emperor, 1934 Rang. 178: 35 Cr. L. J. 1364: 151 I. C. 632. "New Sind" M U. Abbasi Printer and Publisher, In re, 1942 Sind. 65: (1942) Kar. 127: 202 I. C. 405: 43 Cr. L. J. 838.

Hemandas Satoondas v. Bhai Nichaldas Pamandas, 1934 Sind. 110 : 151 I. C. 89.

Lady Raj Malik v. Dr. Swanta Sen, 1951 Simla 209: 6 D. L. R. (Simla) 22.

I. e. clear and definite, and free from ambiguity and should not make unlawful things that are otherwise innocent:
Lord Alverstone, C. J., Scott v. Pilliner,
(1904) 2 K. B. 855, 858.

Maxwell on Interpretation of Statutes,
8th Edition, p. 260; Eng. Hock v.

- be issued, the authority empowered to issue the same and the fees payable therefor;
- (c) direct a fee to be paid for analysing any article of food or for any matter for which a fee may be prescribed under this Act;
- (d) direct that the whole or any part of the fines imposed under this Act shall be paid to a local authority on realisation;
- (e) provide for the delegation of the powers and functions conferred by this Act on the State Government or the Food (Health) Authority to subordinate authorities or to local authorities.
- (3) All rules made by the State Governments under this Act shall, as soon as possible after they are made, be laid before the respective State Legislatures.

### SYNOPSIS

- 1. Scope.
- 1. Scope. The State Government is empowered under this section to make rules which are of minor administrative nature, in order to give effect to the provisions of the Act in matters not falling within the purview of Sec. 23. These rules are to be placed before the State Legislatures.
- 25. (1) If, immediately before the commencement of this Act, there is in force in any State to which this Act extends any law corresponding to this Act, that corresponding law shall upon such commencement stand repealed.
- (2) Notwithstanding the repeal by this Act of any correspoding law all rules, regulations and by-laws relating to the prevention of adulteration of food, made under such corresponding law and in force immediately before the commencement of this Act shall, except where and so far as they are inconsistent with or repugnant to the provisions of this Act, continue in force until altered, amended or repealed by rules made under this Act.

#### SYNOPSIS

- Scope and application of Sec. 6, General Clauses Act, 1897.
   Object of saving clause.
   Repealed nactments.
- 1. Scope and application of Sec. 6, General Clauses Act, 1897. Sec. 6 of General Clauses Act, 1897, provisions of which have been incorporated in Sec. 25 of this Act, runs as under:

Effect of repeal. Where this Act or any Central Act or Regulation made after commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect:

- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment repealed; or
- (e) affect any investigation. legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

Section 6, General Clauses Act, is taken almost word to word from Sec. 38 (2). English Interpretation Act, 1891. Its operation in making pending proceedings continue to be regulated by the old procedure is limited to cases in which the change in law is the result of the old enactment and does not extend where it is due merely to an addition to it. The general rule is well established and embodied in Sec. 6, General Clauses Act, that an amendment of an Act of Legislature during currency of a suit is irrelevant and the rights of the parties are governed by the Act as it existed at the time when the suit was started.

The provisions of Sec. 6, General Clauses Act, will not directly apply where a temporary Act expires by efflux of time. In Bansgopal v. Emperor, 3 the learned Judges of the Allahabad High Court held that the provisions of Sec. 6 of the General Clauses Act were not applicable to a temporary Statute which expired automatically on a given date, but applied only to Statutes which were repealed by another enactment. The fact that temporary Statute was repealed by a subsequent enactment is not material. 4

Clause (c) of Sec. 6, Gener al Clauses Act, embodies the general principle that the repeal or amendment of an Act does not affect a right already in existence unless a contrary intention is made out expressly or by implication.<sup>5</sup> Thus the statuts of non-occupancy raiyat was not affected by the passing of the Bengal Tenancy (Amendment) Act I of 1907.<sup>6</sup>

If a person has been convicted and sentenced prior to the expiry or repeal of the Act and conviction and sentence were legal at the time the trial Court delivered its judgment the continued detention of the appellant cannot become illegal by reason of the expiry of the Act or repeal thereof.

The question whether an offence was committed or not depends on the state of law when the offence was committed and not on the law as it is on the date on which prosecution is started. In the case of penal provisions a person who commits an offence becomes liable the moment the offence

 Bakor Moti v. Ishwar Moti, 1935 Bom. 257, 259; Ran Krishna v. Sithai Ammal. 40 M.ad. 620: 1925 Mad. 911.

4. Aubery v. Aubery, 1947 Lah. 414. See

Jogodanund Singh v. Amrita Lal Sircar, 22
Cal. 767, 781; Hemandas v. Chelaram,
13 1. C. 264.

<sup>3. 1933</sup> All. 669 followed in Kalyandas v. Crew. 15 Lah. 7/12, 789; Karimshah v. Zinat Bibi, (1941) Lah. 773: 1941 I di, 175; Haqiqat Ullak Khar v. State, 1951 Raj. 69, 73.

also Hooton's case, (1920) 37 T.L.R. 280 at p. 281; Baldeo Singh v. State. 1951 M. B. 149, 153.

<sup>5.</sup> Gursarandas v. Parmeshwari Chavan. 1927 Pat. 203, 205: 6 Pat. 296. See also Leecis v. Hughes, (1916: 1 K. B. 831: Homilton Gell v. White. (1922) 2 K. B.

<sup>6.</sup> Shiha Kali Charan v. Churil I Charaji. 1927 Cal. 718.

<sup>7.</sup> Jagendra Mohan Goha v. Empera, 1933 Cal, 516.

is committed.¹ In Kashmerelal v. Kishan Devi,² the evidence alleged to be false had been given and the proceedings under Sec. 195, Co. P. C., had been commenced long before the amended Code (of 1923) come into force. The Subordinate Judge refused to give sanction for presecution under the old Code of Criminal Procedure. The application to the Appellate Court (District Judge) was pending when the new Code came into force. Daniels, J. observed therein:

"The case is therefore governed by Sec. 6 (e) of the General Clauses Act. The applicants had incurred a liability to have them prosecuted for false evidence sanctioned and the complain at on his application being dismissed by the Subordinate Judge acquired a right to apply to the Appellate Court under Sec. 195 of the unmentioned Code for the grant of the sanction which the lower Court had refused. Under these circumstances the repeal of Sec. 195 as it then stood could not affect any pending investigation in respect of the right which had accrued to the complainant or the liability which had been incurred by the applicant."

It is well established that the General Clauses Act, 1897, for matters of procedure the new Act must always be followed in 'legal proceeding or remedy but any right which has accrued under the Act which has been repealed will remain subject to the qualification that the repealing Act contains no provision to the contrary.3

2. Objection of saving clause. The very nature of saving clause makes it clear that the object of the Legislature is to prevent a sudden disturbance of existing rights, in consequence of new legislation.4 As wing clause can only preserve things which were in esse at the time of its enactment and therefore cannot affect transactions which were complete at the date of the repedling statue.5 A saving clause cannot be properly looked at for the purpose of extending an enactment nor can it give a new or different effect to the previous sections of the enactment.6

Where the main enactment is clear a saving clause can have no repercussion on the interpretation of the main enactment so as to exclude from scope what clearly falls within its terms.7

Sub-section (2) of this section of Act XXVII of 1954 clearly saves all rules, regulations and by-laws relating to prevention of adulteration of food framed under the repealed Acts until they are altered, amended or repealed by rules framed under this Act or unless they are inconsistent with or repugnant to the provisions of the Act. On the specific saving of the prior rules under Sec. 25 (2) the rules under Sec. 20 of the Madras Act III of 1918 must be considered to be in force under the Act also till they are replaced by other rules.8

Food Inspectors appointed under U. P. Pure Food Act of 1950 were conferred the power to prosecute by the Act itself. Section 34 of that Act empowered them to prosecute Food Inspectors did not derive this power under any rules. When Sec. 34 of the Act was repealed in view of the

5. Halsbury's Laws of England, 2nd Ld., Vol. 31, p. 486.

Owen-Entires V. Si'ana Vithal, 11 Boun 657: referring to Mayor, e'c. of Vinhelli v. Lyons, L. R. 22 Ch. D. 287 (301).

Shamsunder v. Ramdas, 1951 Punj. 52.
Public Proceeding v. M. S. Polaniston. 1957
Mad. 736.

In re Chockalingam, 1945 Mad. 521, 522.
 26 Gr. L. J. 90 (All.); Rama Krishna v. Sithai Ammal, 48 Mad. 620: 1925 Mad. 911, 912 (F. B.). See also Nishikania v. Calcutta Corporation, 1953

<sup>3.</sup> Sham Sunder v. Ramdas, 1951 Punj. 52, 56 (F. B.); Danmal Parshutandas v. Firm Babu Ram Chhote Lal, 1936 All. 3; Piare Dussadh v. Emperor, 1944 F. C. 1.

<sup>4.</sup> Jokha Ram v. Ram Din, 8 A. 419 (427).

the notification appointing Health Officers and others to be Food Inspectors may ever the purpose of appointing them Food Inspectors under the Prevention of Food Alube asion Act, but this notification neither gave them the power to prosecute under U.P. Pure Food Act nor can it be deemed to confer this power under the Prevention of Food Adulteration Act.

In Abdul Salam, In re,2 the Sanitary Inspector purchased from the shop of the accused a packet of teadust. It was found to contain artificial colouring matter derived from coalter, which the Public Analyst considered constituted an infraction of rale 37 (e) of the Madras Prevention of Adulteration rules which prohibited the sale or possession for the purpose of sale a mixture of tea and any substance prepared in imitation or as substitute for tea. The areased was tried and convicted prior to the coming into operation of new Rules framed under Act XXVII of 1954. It was held that the accused would not be saved by reason of the coaltar dye used falling within one or more of the different categories mentioned in the rule by virtue of Sec. 25 (2) of this Act.

3. Repealed enactments. See notes under the heading "Prior Law" under Sec. 1.

### APPENDIX A

# HISTORY OF FOOD AND DRUG ADULTERATION LAWS ALL OVER EUROPE AND U S. A.1

Records of Government efforts to prevent food and drug adulteration go back to antiquity. Both Athens and Rome made provision against the adulteration of wine. With the growth of the mediaeval towns there was a gradual transfer of certain forms of food manufacturing from the home to the artisan's shop. As bread baking, milling, wine and beer making and slaughtering became recognized trades the Government began to regulate them. In the reign of Edward the Confessor brew its were punished for bad work and during the sixteenth century many English towns employed ale tasters. Beginning in 1203 the Assize of Bread regulated the price of the loaf and gradually clauses controlling adulteration of bread and other products were added, until the later Acts, finally abrogated in 1836, acquired some of the character of a general law.

In 1316 the London pepperers, or spicers began to regulate the quality of their produce, and the drug and grocery trades, which were one until 1617, followed the same practice. The College of Physicians was authorised to supervise apothecasies in 1540 and in 1553 and published the first pharmacopeeia in 1613. From the early eighteenth century onward special legislation, primarily to protect the revenue, controlled such articles as tea, coffee, chicory, beer and wine.

In France food control statutes were early enacted. In Paris that of 1292 forbade the adulteration of beer and that of 1330 the mixing and misreprees uting of wine. In 1703 Paris had 200 public wine inspect rs. In 1382 millers were forbidden to mix foreign cereals or legumes with wheat; in 1420 bakers were forbidden to grind wheat, in order to make adulteration more difficult to accomplish. In 1396 Paris forbade the colouring of butter or the mixing of old butter with new. Henry II proceeded against the adulteration of saffron and Philip IV against that of drug, spices and related products. The Paris Conseil de Salubrite, established in 1802, and later other departmental and Municipal Councils examined and reported on the quality of products and began to acquire jurisdiction over food and drugs.

In Germany records of regulation go back to the thirteenth century, In 1532 Charles V attempted some imperial regulation, but control wes exercised almost wholly by local authorities, the towns of the guilds. The Dukes of Saxony regulated druggist as early as 1607. Frederick II of Prussia appointed drug inspectors. In the seventeenth century commissions of physicians supervised apothecaries and published pharmacopoeias.

In no country does a general law seem to have been enacted before the second half of the nineteenth century. Such laws would have been fittle in the main, for until the invention of the microscope about 1590 and the de elopment of analytical chemisty the means of detecting more than a very faw kinds of adulteration did not exist.

<sup>1.</sup> Encyclopaedia of Social Sciences, Vol. VI, pp. 297-301.

In 1820 Frederick G. Accum inaugurated a period of muckraking in England which A Treatise on Adulteration of Food and Culinary Poisons (London). Then followed an anonymous brochure, Detth in the Pot, and finally Hassail's Fund and Its Adulterations (London 1855), embodying the investigations of the Analytical Sanitary Commission organized by Wakley, the editor of the London Lancet. As a result general regulatory laws were enacted in 1860 and 1872. In 1874 there was established in London the Society of Public Analysts, which set up standards of food quality and purity. The Sale of Food and Drugs Act of 1875 with the Amendment of 1879, the Margarine Act of 1887, the Sale of Food and Drugs Act of 1899, the Butter and Margarine Act of 1907 and the Sale of Food and Drugs Act of 1927 form the existing English Law.

In France from 1884 onward general and special laws were enacted. In Germany widespread outbreaks of trichinosis resulting from measly pork around public interest. The imperial health bureau (now the Richgesundheitsamt) was founded in 1876 and a general food law passed in 1879; it has since been widened to control margarme, filled cheese edible, fats, butter, wine and saccharin. In 1900 a new Meat Inspection Act was passed. administration of these laws is aided by special research laboratories supported by Government bodies, chambers of agriculture and universities; in 1921 there were about 120 such institutions. Between 1874 and 1921 Sweden, Ausoia, Switzerland, D nmark, Italy, Japan and Russia passed laws controlling food and drug trades largely alon lines laid down in the German and English regulations. The laws are adminstered generally by health department of central and local Governments. Within this same period Portugal, Rumania and Spain issued royal ordinances designed to cope with the problem, but neither these countries nor Russia provided proper adminstrative or scientific apparatus to detect or prevent frauds.

Agricultural chemists under the leadership of Samuel W. Johnson paved the way for State food legislation in the Unit d States by exposing adulteration in the fertilizer industry and led in the fight for further laws to curb adulteration of meat, kerosene, milk, foodstuffs, foods and drugs, paints, insecticiles and fungicides. As a result numerous state and federal laws against adulteration came to be administered by departments of agriculture or by agricultural experiment stations and colleges, with which such chemists were early connected.

The city boards of health established between 1850 and 1875 advocated and secured legislation regulating the quality and sale of meat and market milk. As a result of conflicts between cities, milk dealers and dairy farmers dairy associations were formed which succeeded in having State laws controling dairy product enacted. In some States a dairy commissioner still supervises dairy products. The first general food law was passed in Illinois in 1874. In 1070 a joint committee of the principal scientific societies concerned with public health matters drew up a model law for New York. In 1879 the National Board of Fride recognized by resolution the need for food and drug legislation.

About this time the success of oleomargarine in competing with butter induced the well organized dairymen to secure remedial legislation in a number of fates. In 1881 food and drug laws were enacted in New York and New jersey, and in the ensuing twenty-five y ars most. States enacted food laws. In 1871 general food inspection was be un in the District of Columbia and in 1893. Gangee's enacted a Food and Drug Law for the District to be administered by the Bureau of Internal Revenue. In 1893, the District

Health Officer was put in charge. Beginning in 1906 many States which had been without regulation laws until that time passed legislation similar to the Federal laws; other States brought their laws into harmony with the Federal Statute. Boards of Health enforce the laws in sixteen States, Boards of Agriculture in eleven, independent commissions in fifteen and agricultural experiment stations in four. In a few States there is no active enforcement.

The first national food adulteration law, the Olcomargarine Act of 1885, since repeatedly amended, was cracted after a hard struggle. In the following year the Division of Chemistry of the United States Department of Agriculture, then under the direction of Harvey W. Wiley, began issuing a bulletin on "Foods and Food Adulterants" (no. 13, 9 pts., 1837-1902). This and later supplements furnished ammunition in the struggle for legislation. In 1889 the Department of Agriculture was given its first appropriation to "extend and continue the investigation of the adulteration of food, drugs and liquors".

A United States Supreme Court decision of 1887, denied to the States the right to interfere with the shipment of original pakages into the States and thus materially handicapped the enforcement of State laws. As early as 1879 Luropean countries began to restrict the importation of meat of animals from the United States because of pleuropneumonia and trichirosis and by 1838 eleven countries had prohibited the importation of pork products from the United States. In 1890 Congress passed a very general law relating to exported and imported foods and drugs. The administration of this law was placed in the hands of the Secretary of Agriculture, but no special provision was made for its enforcement.

In 1891 a not very effective meat inspection law was enacted. From 1890 to 1893 there was a bitter and unsuccessful fight in Congress over a Bill analogous to the margarine law to curb the very prevalent adulteration of lard. In 1896 filled cheese was so heavily taxed that it was practically driven off the market. In 1897 the importation of tea was regulated and in 1898 mixed flour was heavily taxed.

In 1902 the Division of Chemistry (called the Bureau of Chemistry after 1901) of the Department of Agriculture was authorized in an Appropriation Bill to deny entry to adultecated or misbranded importations of food. Even wider power were conferred upon the Secretary of Agriculture in the Appropriation Act for the fiscal year 1901. In 1902 Congress authorized the Secretary of Agriculture "to investigate the character of proposed food preservatives and colouring matters, and other substances added to foods, to determine their relation to digestion and to health, and to establish the principles which should guide their use." Under this authorization the so-called poison squad formed by Harvey W. Wiley investigated boric acid and borax, salicylic acid and its salts, benzoic acid and its salts, subshur dioxide and sulphites, formaldehyde, copper sulphate and saltpetre.

In an Appropriation Act for 1903 the Seccretary of Agriculture was authorized to establish standards for food products, but no means were provided to enforce such standards.

Most of the Federal Laws enacted up to this time had an economic motive. They either protected the farmer from competition or safeguarded the export trade in foodstuffs or both. Some dealt with imports and so had a protective or retaliatory effect as well. Domestic interests bitterly opposed federal control over the domestic food and drugs trades, and after the presentation of the first Bill to Congress in 1379 there ensued a struggle lasting more than twenty-five years. Special interests opposed federal

legislation and many members of Congress and learned jurists questioned the constitutional right of Congress to legislate on the subject as well as the wisdom and the constitutionality of using the taxing power for such purposes. The outstanding leader in the fight for federal legislation was Harvey W. Wiley, Chief of the Bureau of Chemistry. The "embalmed beef" scandal of the Spanish-American War and the muckraking that followed Upton Sinclair's The Jungle (New York 1906) which dealt with meat packing, and Samuel Hopkins Adams' articles on patent medicines in Collier's Weekly in 1905 and 1906 did much to assist his efforts. In 1906 the Food and Drugs Act and the Meat Inspection Act were passed, dealing only with the interstate and foreign commerce in foods and drugs. The Food and Drugs Act makes a misdemeanor not of adulterating or misbranding but only of the shipment or offering for shipment in interstate or foreign commerce of adulterated or misbranded goods. Products manufactured and consumed within the confines of a single State are subject solely to the control of State laws. The Food and Drugs Act has been amended to require that the outside of a package bear a statement as to the quantity of food within and to prevent the placing of misleading curative claims on the labels of medicines, but it does not cover statements made in advertising matter not accompanying the goods.

The early history of the enforcement of the law was a stormy one. The Bureau of Chemistry, charged with the collection of the evidence of violation of the law, came into conflict with the Presidents Roosevelt and Taft.

The lack of harmony in Washington was reflected in a lack of uniformity in local food and drug control in the States, in part because of differences between laws but largely also because of differences in interpretation and administration. One of the principal sources of lack of uniformity was and to some extent still is the lack of legally enacted standards and definitions, which under the Federal law exist for drugs only, as set down in the United States Pharmacopoeia and the National Formulary. As the result of a conference in 1913 of officials enforcing State food and drug law the Secretary of Agriculture established a Joint Committee on Definitions and Standards, representing the National Association of Food, Drug and Pairy Commissioners, the Association of Official Agricultural Chemists and the United States Department of Agriculture. The Secretary of Agriculture publishes definitions and standards for food or drug products set by this committee. Although such standards do not have the force of law, in practice they have great weight with the trade, local enforcing officials and the courts and have helped to bring about a greater degree of uniformity in the control of food and drug products.

The enactment of food and drug standards by law has often been advocated both in this country and abroad. While such standards would make enforcement simpler, less expensive and more efficient, the existence of rigid standards difficult to change would be likely to hamper progress in the food industries and to render difficult the intoduction even of meritorious new articles or new methods of manufacture. This might be avoided by delegating the authority to promulgate and to alter definitions and standards to some responsible government administrative agency.

The history of legislation in control of drugs differs from that dealing with food because of the general regulation of pharmacy as a profession. The practice of pharmacy laws passed by the States early in the nineteenth century helped maintain the purity of medicines. Furthermore, a large proportion of crude drugs has always been imported, and proposals to supervise importations met little opposition. The New York College of Pharmacy,

soon joined by the Philadelphia College of Pharmacy, urged legislation in 1831, and Congress responded in 1848 with an Act to prevent the Importation of Adulterated and Spurious Drugs. The administration of the law became unsatisfactory after a few years, since drug examiners were usually appointed for political reasons rather than for fitness.

In 1887 Congress passed an Act to prevent the importation of opium, and from 1895 to 1906 many States and territories paid special attention to opium and other habit-forming drugs in their general food and drug legislation. In 1907 North Dakota required the presence of habit forming drugs to be declared upon the labels of medicines, establishing a widely followed precedent which has practically driven narcotics out of patent medicines. Such legislation failed to control he opium evil, in which the United States had become specially interested with the acquisition of the Philippine Islands; and by the Act of March 4, 1909, amended in 1914, the United States prohibited the importation and use of opium for other than medicinal purposes. The Harrison Narcotic Act, applying to both opium and cocaine, was passed on December 17, 1914, and amended on May 26, 1922. It is administered by the Bureau of Internal Revenue, which through the imposition of a small tax requires all who handle or use these drugs to be registered and to keep records in orders that illegitimate trade and uses may be punished. In addition, international conventions have been adopted in an effort to restrict international trade in opium and its derivatives.

While the Harrison Narcotic Act, the Meat Inspection Act and the Food and Drugs Act have cured or restricted many very great evils, they have grave defects apart from errors of administration. So far as concerns the Food and Drugs Act the most serious are the lack of authority to inspect warehouses, of any restriction whatsoever upon the use of the most virulent poisons in drugs or of jurisdiction over fraudulent statements other than those in or upon the packages of foods or drugs. Furthermore, the common practices of adulterating such commodities as textiles, leather goods, cosmetics and articles of common household use, sometimes with dangerous substances, is altogether uncontrolled.

#### APPENDIX B

## SPECIAL PROVISIONS RELATING TO MILKI

Milk is especially liable to be adulterated. The case with which milk can be tampered with, either by the addition of water, the extraction of fat, or both, has led to many prosecutions for adulterated milk, and to a complicated procedure for ensuring that the guilty person-producer wholesaler or retailer-is discovered and convicted.

Section 24 of the English Act of 1938 details the substances which may not be added to milk and the liquids which may not be sold as milk.

Section 24. Food and Drugs Act, 1938. Certain additions not to be made to, milh, and certain liquids not to be sold as milk.

(1) No person shall—

(a) add any water or colouring matter, or any dried or condensed milk or liquid reconstituted therefrom, to milk intended for sale for human consumption; or

(b) add any separated milk or mixture of cream and separated milk

to unseparated milk intended for such sale; or

(e) sell, or offer or expose for sale, or have in his possession for the purpose of sale, fo human consumption any mik to which any addition has been made in contravention of the provisions of this sub-section.

(2) No person shall sell, or offer or expose for sale, under the designation of milk any liquid in the making of which any separated

milk or any dried or condensed milk has been used.

(3) A person who contravenes any of the provisions of this section shall be guilty of an offence.

There have been innumerable cases relating to milk, but the present position is substantially as laid down in the case of Hunt v. where it was held that no offence is committed if it can be proved that the milk is sold in the same state as it came from the cow, notwithstanding that the amount of milk fat was less then 3.0 per cent. and/or solids non-fat less than 8.5 per eent., was laid down in the Sale of Milk Regulation, even if the deficiency is due to the improper feeding or milking. The unsatisfactory nature of this decision is well illustrated in the case of Grigg v. Smith3 where a farmer kept only one cow. He partly milked the cow and sold the result to his customers, but the "strippings" were left for the calf. The milk sold contained only 2.6 per cent milk fat, but on the authority of Hunt v. Richardson, supra,

If the seller fails to stir the milk properly, with the result that some sustomers get milk deficient in fat, an offence is committed.4 Where milk contains less than the prescribed amount of fat and/or solids non-fat, it is for the defence to prove that it is not adulterated. To do so, positive evidence must be submitted covering the whole period between milking and the procuring of the sample,5 and to rebut such defence the prosecution must show that another sample—an "appeal-to-cow" sample—taken from the same cows under identical conditions to those existing when the original sample was

Stewart Swift : Food and Drugs \dmmistration.

<sup>2 [10]6 2</sup> K. B. 116 : 25 Digest 128, p.

<sup>(1917) 87</sup> L. J. K. B. 488 : 25 Digest

Digest 92, p. 174; and Bridge v, Griffin,

<sup>1925, 2</sup> K. B. 233 : 25 Digest 130 p. 508.

kings v. Merries, (1920) 3 K. B. 566; 25 Digest 130, p. 506; Bower v. 7. (1917) 81 L. J. K. B. 802; 23 Dec. st. 130 p. 505; J. Kins v. Williams, 1930 103 J. P. 183, Digest Supp.

produced, was up to the required standard1 but it has also been held that it is unnecessary for the defendant to prove that no one tampered with the milk, if the Court are satisfied that the deficiency in solids was due to natural causes.2

Factor influencing the composition of milk. Milk is an extremely complex substance, and there are many factors which affect the amount of milk fat and solids non-fat, some of which are capable of being controlled by the the farmer, others are difficult if not impossible to control.

According to Tocher3 who made an extensive examination of the result of the analysis of 676 samples of milk from individual cows from all parts of

Scotland, the average percentage compsition is as follows:

id, the distance i	
Constituent	Average percentage
Buiter fat	- 3.95
	4.64
Lactose	2.43
Casein	0.74
Albumin	0.35
Other nitrogenous substances	
Ash	0.70
	87.19
Water	1 Las assert virusles

Davies4 averages the results obtained by many workers in various

countries as 3.73 per cent milk fat and 8.39 per cent solids non-fat.

So far as milk fat is concerned, Tocher<sup>5</sup> found that the percentage in the milk of individual cows varied considerably, as will be seen by the following figures:

D u. fat har cent	Frequency distribution
Butter fat per cent 1,625	1
1.875	
2.125	3
2.123	10
	9
2.625	33
2.875	-10
3.125	1()()
3.375	78
3.625	106
3.875	94
4.125	60
4.375	-1 O
4.625	42
4.875	15
5.125	6
5.375	7
5.625	()
5.875	3
6.125	3 7
6.375	2
6.625	1
6.875	.)
7.125	1
7.375	
	676
	along the surround accounts.

Wilkinson v. Clark, (1916) 2 K.B. 663: 25
 Digest 129, p. 503; Smith v. Philpott, (1920)
 K. B. 222: 25 Digest 129, p. 504.

5. Tocher (1926), op. cit, p. 46.

Churcher v. Reeves, (1942) 1 K. B. 172 : (1942) 1 All. E. R. 69.
 Tocher, J. F. (1925) : "Variation in "Variation in

the Compositions of Milk," Edinburgh,

H. M. S. O., p. 114 et seq.

Davies, W. L. (1939): "The Chemistry of Milk" 2nd Ed., London, Chapman and Hall, p. 15.

It will be observed that the variation for a single cow ranged from 1.625 to 7.375 per cent. in genuine milk; 56 or 8.3 per cent, were below the 3.0 per cent standard.

Cransield, Griffiths and Ling<sup>1</sup> obtained the following result from the mixed milk of 15 herds. Sixty, or 8.2 per cent. of the 732 samples, fell below the presumptive standard. Five of the 15 herds were known to be giving milk low in solids non-fat.

Range per cent 2.20—2.39	No. of samples
2.40-2.59	3
2.60-2.79	8
2.80—2.99	12
	37
3.00-3.19	67
3.20-3.39	96
3.40-3.59	99
3.60—3.79	112
3.80-3.99	93
4.00-4.19	83
4.20—4.39	44
4.40—4.59	31
4.60—4.79	21
4.80—4.99	7
5.00-5.19	
5.20—5.39	10
5.40-5.59	4
5.60—5.79	3
5.80—5.99	1
3.33	1
	732

Mean per cent. of fat-3.71.

Davies<sup>2</sup> summarised the variations in the fat content of milk found by a number of workers as follows:

		Milk fat	
Authority  Richmond  Crowther  Cranfield  Tocher	Maximum per cent 6.39 5.30 6.00 7.50	Minimum per cent 1.03 2.00 2.20	Average per cent  3.78 3.70 3.71
Golding, et. a.	7.50 2. 5.17	1.66 2.60	3.95 3.88

The variation in the percentage of solids non-fat is generally greater than in the case of milk fat. Tocher<sup>3</sup> found that the figure for 676 individual cows varied from 6.875 to 10.625 per cent, the bulked milk giving 8.78 per cent. 167, or approximately one-quarter, were below the presumptive standard of 8.5 per cent. The day-to-day variation for a single cow was found to be from 8.8 to 8.2 per cent. The distribution of the 676 cases was as follows:

Cranfield, H. T., Griffiths, D.G., and Ling, E. R. (1927): "The Composition of Milk,"
 J. Agric, Sci., Vol. XVII, Part 1, pp. 3. Techer (1925), op. cit., p. 17.

Solids non-fat	Frequency
per cent	distribution
6.875	1
7-125	•••
7.375	•••
7.625	5
7.875	6
8.125	44
8.375	111
8.625	150
8•875	156
9.125	110
9.375	52
9.625	19
9.875	15
10.125	4
10.375	2
10.625	1
	676

The following are the results obtained by Cranfield, Griffiths and Ling1:

Range per cent	No. of samples
7.90—7.99	1
8.00—8.09	3
8.10—8.19	5
8.20—8.29	13
8.30—8.39	<b>2</b> 6
8.39—8.49	59
8.50—8.59	103
8.60—8.69	107
8.70—8.79	113
8.80-8.89	116
8.90—8.99	80
- 00	47
	33
9·10—9·19 9·20—9·29	17
	7
9.30—9.39	1
9.40—9.49	1
9.50—9.59	specialist to security only to the
	732
	and the same of th

The mean of the 732 samples was 8.746 per cent, and in 107, or 14.6 per cent the milk fell b low the standard of 8.5 per cent. It should be noted, however, that 5 of the 15 herds from which the samples were obtained were known to be giving milk low in solids non-fat, so that some degree of selection had taken place. 518 samples were obtained from the remaining 10 herds selected at random, which 60, or 11.6 cent contained less than 8.5 per cent of solids non-fat.

<sup>1.</sup> Cranfiled, H. T., Griffiths, D. G. and Ling, E. R. (1927): "The Composition

of Milk," J. Agric. Sci., Vol. XVII, Part 1, pp. 62-93.

The following is the summary of v. riation in the amount of social mone! t obtained by a number of workers and tabulated by Davies1:

### Solids non-fat

Authority	Maximum	Minimum	Average
	per cent	per cent	per cent
Richmond Crowther Cranfield Tocher Golding, et. al.	10.60 9.50 9.60 10.66 9.28	4·90 8·40 7·90 7·00 8·40	8.74 8.78 8.75 8.80

Variation in the proportions of the constituents of milk may be due to a variety of factors, including the following, viz.: (1). Breed of cow;

- Individuality of cow; (3)Period of lactation;
- (4)Age of cow;
- (5) Health of cow:
- Kind and quality of food: (6)
- Interval between milking; Efficiency of milker;
- Climatic and weather conditions; (9)
- Excitement or exercise; (10)Day-to-day variation; and (11)

Mixing of milk from different coas in the herd.

The effect of each factor varies, both as regards milk fat and solids non-fat content. The mixed milk of a herd may be deficient in either or both respects, as a result of one or more of the above influences. On the other hand, the mixing of milk from a number of cows may counteract the effect of variations in that from individual animals, so that although the milk of some of the cows is deficient in fat and/or solids non-fat, the mixed milk is up to standard,

(1) Breed of cow. Milk from different breeds of cow varies considerably in its composition, and they can be divided into groups each of which is best

Regarding the actual composition of milk from various breeds Tocher<sup>2</sup> gives the following figures obtained from his records of 676 indiv

Breed	Fat	Lactose	om his records	of 676 individual	animals.
Jersey Guernsey	5·43 5·16	4.85	Protein 3.96	Ash 0: <b>7</b> 5	Water
Kerry Welsh	4·67 4·40	4.80	3.92	0.75	85·01 85·37
Ayrshire Shorthorns	4.09	4.57	3.27	0.60	• • •
British Friesi.		4·80 4·62	3·27 2·11	0·69 0·73	87·38 87·29
1. Davie 191	9 on cit	15 17		6.71	87.93

Davis 1939, op. cit., p. 17.
 Taker, J. F. (1927): The Causes of the Variation in the Proportion of Butter

Fat in Milk" Scot, J. of Agric. Sci. Vol. X, No 1, January 1927.

As a result of the examination of 6,566 samples from cows exhibited at the Dairy Shows of the British Dairy Farmers' Association, Drakeley obtained the following results. It should be remembered, of course, that the animals were specially prepared for show purposes and kept under special showyard conditions:

Breed	Average percentage of fat	Breed	Average percentage of fat
Jersey	5.18	Jersey	9.30
Guernsey	4.88	Guernsey	9.29
Kerry	4.30	South Devon	9.25
Dexter	4.15	Dexter	9.11
South Devon	4.02	Kerry	9.09
Ayrshire	3.97	Red Poll	9.09
Red Poll	3.81	Dairy Shorthorn	9.04
Dairy Shorthorn	3.78	Ayrshire	9.00
Lincoln Red	3.76	Lincoln Red	9.00
British Friesian	3.67	British Friesian	8.78

The mixed milk of the herd may be improved as regards fat content by the introduction of one or more Channel Island animals.

(2) Individuality of care. The milk from a single cow is subject to wide variations in composition, both from day-to-day and over a whole i ctation period. Over a period of 10 days Mackintosh<sup>2</sup> found the fat content of the milk of three cows to vary as follows:

	Range of butter fat		
Dairy Shorthorns	Morning	Evening	
	per cent	per cent	
Firefly 3rd	3.6-3.80	4.15-4.4	
Flora	2.7—3.45	3.75-4.6	
Doll 2nd	2.8-3.70	4 70—5.5	

The yields were very uniform and milking was carried on under identical conditions, especially as regards time.

Regarding solids non-fat, Crantield<sup>3</sup> obtained the following results from the examination of milk from 74 individual cows in all, sampled on eight occasions during a period of three years:

2. Mackintosh, J. (1929): "The Variation in the Fat Content of Milk," Conference

of Certified and Grade A (TT) Milk Producers' Association, Reading "Dairyman," May 1929, p. 490.

man," May 1929, p. 490.
Cranfield, H. T. (1927). "Variations of Solids non-fat Content of Milk," "Dairyman," June 1927, p. 546.

<sup>1.</sup> Drakeley, T. J. (1927): "The Influence of the State of Lactation and the Breed of Cow on the Yield and Quality of Milk," J. Agric. Sci., Vol. XVII, Part 1, January 1927, p. 126.

Date of sampling	No. of cows in milk	No. of cows giving below 8.5 per cent solids non-fat standard	Percentage	Solids non- fat per cent in bulk milk
F 0 00		1.4	40	0.02
5-2-23	31	14	42	8.93
5-3-23	32	16	50	8.72
5-10-23	31	10	32	8.84
1-4-24	29	7	24	9.37
1-8-24	32	11	34	8.30
24-11-24	28	11	39	8.88
16-2-25	37	14	38	8.75
<b>1</b> 3-11-25	16	6	38	8.73

These variations in individual animals are due to inherent peculiarities, possibly of a physiological nature. Some of the other factors may contribute to the variation, but in this connection it must be remembered that the examples given are of cows that are members of herds, the remaining animals of which gave milk up to or above the standard, whilst the whole of the herd were kept under similar conditions as regards food, housing, etc.

It is most important that cows giving milk consistently below standard, eitler as regards fat or solids non-fat, should be detected and moved out of the herd, or their milk mixed with that from other animals having a comparatively high fat or solids non-fat content.

(3) Period of lactation. The percentage of both fat and solids non-fat varies with the time that elapses from calving. Generally speaking, the fat centent is high immediately after calving, falling rapidly to the minimum 2 to 4 months afterwards, then gradually rising to the end of the lactation periol. Considerable day-to-day fluctuations usually occur in the last month. The solids non-fat are high at the commencement, falling slowly throughout the period until near the end, when a rather sudden rise takes place.

\* 4

The condition of the cow at calving influences the subsequent yield an quality of milk. Animal in good condition will be more likely to maintain a good yield of higher quality than will a cow in poor condition,

In order to overcome the difference due to the lactation period it is necessary to arrange that the various cows in the herd calve at different times, so that the low-standard milk of some members of the herd is balanced by the correspondingly high-standard milk from others.

(4) Age of animal. Generally speaking, the percentage of fat and colids non-fat appears to decrease gradually with advancing age, after about the inth or seventh year, when the maximum is reached. These variations are, however, usually of slight degree and their effect negligible on the mixed milk of a herd.

nul. found that the percentage of milk-fat de mand from appreximately 10

<sup>1.</sup> Tocher (1925), op. cit. [see note (1) on p. 123], p. 5.

per cent at the sixth year by about 0.5 per cent during the next six or even years. With regard to solids non-fit, he found the mindmum to be 8.9 per cent at three years, falling to 8.6 per cent at 13 years.

A'though the fluctuations on account of age are slight and not likely to adversely affect the mixed milk of a herd, it is advisable to maintain a number of young cows in the herd, in order to counteract the influence of any older animals.

(5) Health of cow. It is obvious that any diseased condition which interferes with the general state of an animal is likely to have some affect upon the yield and quality of the milk. Some diseases are more important than others in this respect. Generally speaking, the fat content is inequally and the yield reduced at the onset of disease.

In no case should milk from an animal suffering from discase be mixed with that from other cows in the herd.

(6) Kind and quality of food. A large number of experiments have been carried out in order to ascertain what effect, if any, differences in food, both as regards quality and quantity, make on the quality of milk. Generally speaking, the results obtained indicate that, provided the food is reasonably adequate, variations in feeding have little effect upon the fat-content and still less upon the solids con-fat content. Under-feeding may adversely affect the yield.

According to Zwagerman¹ Dutch experience with Holland-Friesian cattle shows that with forced feeding the fat percentages can only be influenced 0.1 per cent increase or decrease. 14,566 Friesian Herdbook Cows under normal feeding gave an average fat-content of 3.34 per cent against 3.24 per cent where the feeding was insufficient.

Regsdale and Turner<sup>2</sup> carried out experiment to ascertain the effect of sudden decreases in the amount of food. Three cows found to be on an excessive diet were given a standard ration for ten days composed of the same ingredients. For the next ten days the quantity of each food-tuff was halved; at the end of this period the original quantity was gradually given. The average results for the three cows are as follows:

Period	Average milk yield per day	Average far percentage
	lb.	
Ieavy feeding	39.6	4.059
tandard feeding	36.7	<b>3.</b> 985
Half standard feeding	27.2	4.453
Returning to heavy feed	ing 31.5	3.728

The above workers also draw attention to the first that when cows are first turned out to grass there is a distinct increase in the first perentage, This they attribute to the under-feeding which usually occurs, due to the relatively high water-content of fresh pasture, resulting in a reduction of food constituents and partly to the increased exercise which occurs on grazing.

With regard to individual cows, feeding certainly has an influence upon the yield and to a much less degree the fat-content. This applies especially

<sup>1.</sup> Zwagerman, C. (1928): "Data on the Lactation Records as a Basis for a Rational Breeding for Production, Proc., World's Dairy Congress, 1928, pp. 238-

Regsdale and Turner (1923): "The Effects of Under-feeding on Milk Secretion,"
 J. Dairy Sci., Vol. VI, p. 251.

to the animal during the period two months prior to calving, until a few weeks or even months afterwards. Good feeding prior to calving is essential for the production of a high yield of good quality, and if such standard is maintained for some time after calving the above results will be maintained. In short, good management of the cow both before and after calving, is necessary if the maximum quantity of high-quality milk is to be obtained and maintained for a reasonable length of time.

importance in relation to the composition of milk. Where the periods elapsing between the evening and morning, and morning and evening milkings are equal, or practically so, very little difference in the fat and solids non-fat content will occur. Owing, however, to factors over which the producer has little control, including labour, demands of the consumer of distributor, and transport, it rarely happens in practice that the intervals are equal, the night period usually exceeding the day period, in which case the fat percentage is less in the morning than in the evening. Little change appears to occur in regard to the percentage of solids non-fat.

According to Mackintosh<sup>1</sup> the fat percentage is low red 0·10 per cent to 0·15 per cent for each hour that the period between milking exceeds 12 hours, whilst it is increased 0·20 per cent to 0·25 per cent for each hour that the interval is under 12 hours. Mackintosh also found that difference occurred with individual cows, as shown by the following:

Dairy Shorthorns	Milking intervals	Difference in fat-content,		
Firefly Flora Doll 2nd	16 and 8 hours 15 and 9 hours 15 and 9 hours	p.m. above a.m. 0.64 per cent 1.04 per cent 1.78 per cent		

According to Ling<sup>2</sup> of 7,507 samples of milk analysed at the Midland Agricultural College, of which 2,437 were from mornings and 5,070 from evenings milk, 23:3 per cent. of the former were below the 3 per cent. fat standard, but only 1.83 per cent of the latter. In the majority of cases of mornings milk below standard, the intervals between milking were excessive and a readjustment brought about an improvement.

There is little doubt that of all the factors influencing the composition of milk, the intervals between milking are of chief importance to the dairy farmer, as being most easily controlled. In spite of the difficulties mentioned above, every effort should be made to make the milking intervals as nearly equal as possible. Failure to do so, coupled with other factors, such as a number of newly calved cows, together with new grass likely to lead to high yields, may result in the mornings milk being very near, if not actually below, the standard. In cases of deficiency in milk fat, this factor should receive first attention, as frequently an adjustment of the intervals between milking raises the percentage of fat from just below to above the legal requirements.

(8) Efficiency of milker. This is an important factor, not only from the standpoint of the composition of milk, but also in regard to the yield of milk

Mackintosh, J. (1929), op. cit. [see note(u) on p. 128] p.491.
 Ling, Edgar R. (1930): "Dairy Chemistry," London, Chapman & Hall, p. 38.

and possibly the health of the cow. Where milking is inefficiently performed and the udder is not properly stripped or completely emptied of milk, the fat pe centage will be low, the yield of milk is rapidly interfered with and disease or injury of the udder may ultimately result.

The percentage of fat varies according to the period of milking. Milk drawn off at the commencement may contain less than 1 per cent fat, whereas the strippings may consist of more than 9 per cent fat. Ling¹ quotes the following figures obtained by Van Slyke:

	Cow No. 1	Cow No. 2	Cow No. 3
First portion Second portion Third portion Strippings	0.90 per cent	1.60 per cent	1.60 per cent
	2.60 per cent	3.20 per cent	3.25 per cent
	5.35 per cent	4.10 per cent	5.00 per cent
	9.80 per cent	8.10 per cent	8.30 per cent

Gilchrist<sup>2</sup> in 1912 obtained the following results of the a nalysis of milk obtained at various stages of milking:

<sup>1.</sup> Ling Edgar R. (1930), op. cit. p. 40.

Gilchrist, D. A. (1912): "Compositson of First-drawn and Last-drawn Milk," Appendix V, Annual Report of the

Intelligence Division, Ministry o Agriculture and Fisheries, 1912, Gmd. 6872.

	gs Whole milkings	6	rent Fer cent	0, 7	∱ <u>+</u>		0.4	0.0	I. 4.	
6 p.m.	Strippings	Dow		2 4	7 1	1. II	\	0 0	2.0	5,59
	First drawn (1 pt.)	Per cent	4.65		000	9.4	ין ני	. 4 . 4	2.8	3.57
	Whole	Per cent	4.2	4.8	တ	4.0	4.5	5.4	4.	4.30
12.30 a.m.	Strippings	Per cent	r. c.	6.5	7.8	9.1	7.6	6.4	5.3	6.56
	First drawn (1 pt.)	Per cent	3.1	1.9	2.1	0.7	ري ت	2.1	<u> </u>	2.17
	Whole	Per cent	2.3	2.7	2.9	2.6	3.4	3.3	4.6	2.94
5 a.m.	Strippings	Per cent	3.6	3.8	3.8	8.9	6.8	7.3	5.9	6.03
	First drawn (1 pt.)	Per cent	1.3	4.	1.2	9.0	1.4	1.6	1.3	1.26
	No. of cows	Per cent	11	13	14	16	18	35	36	Average per cow

Milking should be ca ried out as rapidly as possible, without disturbing the animal, and it must be thoroughly done, as it is clear from the figures given that any failure on the part of the milkers to thoroughly strip all the cows will almost invariably lead to milk deficient in fat.

Efficient milk recording is of value in this connection, being a check on the amount of milk normally given by each cow.

- (9) Climatic and weather conditions. Variations in composition of milk under this heading may usefully be divided under the following heads:
  - (i) Time of year;
  - (ii) Temperature; and
  - (iii) Sudden weather changes.
- (i) Time of year. Generally speaking the percentages of fat and solids non-fat in milk are higher in winter than in summer. In the former the yield is usually lower compared with the latter. A number of factors may, however, influence the milk, and it is difficult to accurately determine the effect of each.

In any case the effect of the time of year is slight and not of very great importance when considered alone. When dealt with in conjunction with temperature and weather conditions, food supply, etc. it may assume more importance.

(ii) Temperature. As a rule, low temperature—colder weather—tends to increase the fat percentage, and a high temperature—warmer weather—tends to lower it. Ragsdale and Brody¹ found that there was an approximate increase of 0.15 to 0.20 per cent. in fat for a decrease of 10° F. in temperature. In an investigation by Hays² the indoor or outdoor temperature for 258 consecutive days was recorded, according as to whether the cows were in or out, together with the percentage of fat. The results obtained were as follows:

No. of days	Average	Average percentage
	temperature	of fat
7	86.5°F	3.171
50	79.2°F	3.250
69	69.6°F	3.389
48	60.5°F	3.481
38	49.7°F	3.505
35	40.1°F	3.463
9	31.0°F	3.465
2	24.5°F	3.60

These figures show that there is an increase in fat to about 40° F., but a slight decrease below that figure. The results were confirmed by Hays in a further experiment with two Jersey cows, as nearly identical as possible and kept under exactly similar conditions as regards feeding, milking, etc., except

Ragsdale and Brody (1922): "Effect of Temperature on the Percentage of Fat in Milk," J. Dairy Sci., Vol. V, p. 212.
 Hays (1926): "Effect of Environmental

Temperature on the Percentage of Fat in Cow's Milk," J. Dairy Sci, Vol. 1X, p. 219.

that the temperature was varied from time to time by artificial means. The results abtained are shown below:

No. of days in trial	Average temperature for period	Average 1b. of milk per day	Average per cent of fat for period	Average per cent of fat neglecting first day of each period
8	92.7°F	20.8	5.388	5.178
4	$80.0^{\circ}\mathrm{F}$	21.6	5.227	5.107
6	72.5°F	20.5	5.149	5.153
4	60.9°F	21.0	5.424	5.339
5	52.3°F	21.3	5.646	5.582
$6\frac{1}{2}$	39.9°F	20.2	6.099	6.283
5	27.0°F	18.4	6.012	5.543

This investigation also showed that the fat content was higher on the first day of the change than on the subsequent days.

Cowsheds insufficiently ventilated and consequently stuffy, result in the fat percentage being lower, whilst a well-ventilated shed coupled with fresh water, efficient grooming and moderate exercise, results in maximum quality and yield.

(iii) Sudden weather changes. Inasmuch as sudden changes in climatic conditions may affect the temperture, comfort, water and food supply, exercise, etc. of the animals, such changes may have an effect upon the composition of milk. Cranfield¹ records the following effect of changes in climatic conditions, from which it will be seen that the sudden change at the beginning of the second week appeared to lower the solids non-fat percentage, but by the end of the third week it was again normal, apparently due to the cows becoming accustomed to the changed conditions. A further drop occurred in the fourth week, but there was a recovery again at the end of the month.

May, 1923	Percentage of S.N.F.	General weather conditions
lst	8.55	Temperature very high. Above normal.
3rd	8.68	Warm nights. Rainfall moderate. Sun-
4th	8.85	shine moderate.
7th	8.40	Temperture fell during week. Below
8th	8.55	normal. Ground frosts. Snow and
10th	8.24	hail. Thunderstorm. Rainfall heavy.
llth	8.45	Sunshine moderate.
l4th	8.79	Similar weather to preceding week.
15th	8.70	preceding week.
21st	8.35	Similar weather to preceding two weeks.
22nd	8.44	weeks.
28th	8.51	Temperature still below normal. Rainfall
29th	8.95	moderate. Sunshine scanty.

<sup>1.</sup> Cranfield, H. T. (1927), op. cit. [see note (v) on p. 128.], p. 547.

(10) Excitement and exercise. The composition of milk is liable to fluctuation as a result of sexual excitement or other disturbing factors such as storms, etc. With regard to the former, Hooper and Bacon, quoted by Mackintosh1 found an average drop in yield of 0.1 lb. on the day of most evident heat. In one case the fat-content in the morning was 3.7 per cent, at night 1.9 per cent, and the following day 7.3 per cent. The variation in both yield and composition due to sexual excitement vary considerably with different animals, nervous cows being affected to a greater extent than less nervous animals.

The effect of abnormal conditions, such as storms, strange surroundings, etc., is also very variable, some cows being unaffected, whilst others show marked changes in yield and composition of their milk. For instance, the following figures indicate the number of cows giving milk below the 3 per cent fat standard when exhibited at the Royal Agricultural Society's shows2:

Sho	w	Number of cows	Disqualified, milk containing less than 3 per cent fat on average on morning and evening milking	Number of cows giving milk con- taining less than 3 per cent of fat on one morning
Cambridge,	1922	109	7	
Newcastle,	1923	92	13	47
Leicester,	1924	83	16	43
Chester,	1925	123	39	61

Owners of cows entered for show purpose; knowing that their animals would be disqualified if the milk was below standard would be sure to enter only those cows known to give milk of the requisite quality. Hence, it may safely be assumed that the changed conditions of the showground were largely, if not solely, responsible for the fall in the fat percentage.

With reference to exercise, it has been found that, generally speaking, moderate exercise increase the fat-content. Mackintosh3 found increases in four cows as follows as a result of change from rest to exercise:

> Plus 0.27 per cent Plus 0.37 per cent Plus 0.12 per cent Plus 0.47 per cent

Woodward experimented with cows at rest and on exercise which consisted of walking 3 miles a day. In 20 out of 22 cases the fat percentage increased when the animals were changed from rest to exercise, and it

Mackintosh, J. (1926): "Agricultural Research in 1926—Diary Husbandry," Royal Agric. Soc. of Eng., p. 43.
 Ministry of Agriculture and Fisheries (1930): "Variation in the Composition of Milk," Bulletin No. 16, H. M. S. O.
 Mackintosh, J. (1929) op. cit. [See note (u) on p. 128], p. 492,
 Woodward (1923): "Factors Influencing the Percentage of Fat in Milk," J. Diary Sci. Vol. VI, p. 466.

in reased when changed from exercise to rest. The average results of two groups of three cows were as follows:

of thice comp were as to	110110	
	Group 1	Fat
Rest period	6 days	5.25 per cent
Exercise period	6 days	5.52 per cent
Exercise period	10 days	5.28 per cent
Rest period	10 days	4.97 per cent
	Group 2	
Exercise period	6 days	5.07 per cent
Rest period	6 days	4.95 per cent
Rest period	10 days	4.80 per cent
Exercise period	10 days	5.27 per cent

(11) Day-to-day variations. The milk from individual cows varies from day-to-day. This is specially so in regard to the fat-content, but to a smaller extent with the solids non-fat. These variations are particularly noticeable at the beginning and end of the lactation period.

With a held of 30 to 35 cows Cranfield found that the daily variation may easily extend to 1 per cent fat and 1 per cent solids non-fat. The following table shows the number of times in which a variation of 0.5 per cent to 0.75 per cent was recorded, either in fat or solids non-fat content during year's record of a herd:

Extent of variation				on over-	-		
	1 day		2	2 days		3 days	
	a.m.	p.m.	a.m.	p.m.	a.m.	p.m.	
Number of times the variation exceeded—							
0.5 per cent of fat	2	11	1	28	1	26	
0.75 per cent of fat	0	3	0	3	0	3	
0.5 per cent of S. N. F.	0	3	0	8	0	4	
0.75 per cent of S. N. F.	0	2	0	2	0	2	

Total number of samples—a.m. 359, p.m. 362.

It has been found that the mixed milk of a herd of 24 cows may vary as much as 0.6 per cent of fat or 0.87 per cent of solids non-fat between one milking and the next corresponding milking.<sup>2</sup> In herds of less than the above the day-to-day variations may be expected to be greater than these figures.

The influence of this factor is of particular importance in regard to cappeal to cow" samples. The basis of such samples is that the composition of milk from any particular herd is uniform from day to day. In view of the

<sup>1.</sup> Cranfield, H. T. (1929): "Farmer and 2. Ministry of Agriculture and Fisheries (1930), op. cit., p. 16.

above figures it seems a matter of some doub whether such is in fact the case, with the result that the wisdom of taking samples of this kind is open to question. It is conceivable that the milk of a herd may, when sampled, be deficient in fat or solids non-fat to a slight degree and that the farmer knowing it to be genuine milk requests that an "appeal to cow" sample be taken. This may be done and the milk found well above standard, in which case it will be presumed that the first sample was adulterated. In order to overcome the disadvantages attaching to the present method of taking "appeal to cow" sample, it seems desirable that more than one such sample should be taken in order to counteract the influence of these day-to-day variations.

(12) Mixing of milk from different cows in the herd. It has been shown that the milk of different cows varies as a result of a number of factors. It is obvious, therefore, that unless care is taken to thoroughly mix the milk of the herd it is possible that milk deficient in fat or solids non-fit from several cows may be mixed together, with the result that the whole will be below standard. In order that this may be avoided, it is imperative that the milk from the whole of the cows, or at least from a real orable number, be the roughly mixed. This applies particularly in the case of small herds and where milk is bottled.

Summary. It will be abundantly clear from a consideration of the factor likely to vary composition of milk that it may be by no means a simple matter to detect the cause or causes of a deficiency, either in f to solids non-far. Although the combined effect of these factors usually results in milk being up to the required standard, cases frequently occur where a temporary or permanent deficiency is only remedied after considerable investigation.

Whilst the primary duty of an inspector under the Food and Drugs Act is to discover case of adult ration, he ought also to be in a position to advise in cases where genuine milk falls below the presumptive tandard. Although genuine milk may be sold even if it is below the 3.0 per cent fat or 8.5 per cent solids non-fat standards, milk producer should take every precaution to avoid their milk being of poor quality. If a particular factor is four d to be the cause of poorness of the milk and the farmer neglects to take the necessary steps to remedy the matter, he ought to be held liable for the deficiently. In spite of the difficulties attendant upon the practical application of such a principle it must be remembered that in a number of the American States an absolute standard has been fixed and is in operation.

Where milk is produced for sale and is liable to the provisions of the Sale of Milk Regulutions, the following points should be noted in order to ensure it being up to the standard laid down:

- (1) Individual peculiarities in a cow may result in milk below standard.

  Such animals require to be discovered and their milk carefully controlled by adding and mixing it with other milk of high quality.
- (2) The lactation periods of the cows in the herd should be so arranged as to have little or no effect upon the composition of the mixed milk.
- (3) A uniform supply of food of good quality is essential to maintain the cows in good condition so as to produce a high yield of milk of good quality.

Variations in composition are liable to occur when any important change in food occurs, such as turning cows to grass or bringing them in for the winter. Generally speaking, changes in food do not perminently influence the composition of milk, although they may do so for short periods.

(4) The intervals between milking should be as nearly equal as possible.

(5) Milking should be carried out quickly, quietly and efficiently, care being taken to thoroughly remove all the strippings.

(6) Cows giving high yields should be milked first in the morning and

last at night.

(7) Any disturbing factor likely to upset the cow may react upon the composition of the milk.

(8) Thoroughly mix the milk of several cows, taking care to add that of low quality to that of high quality, so as to obtain mixed milk of uniform composition. This is specially important where milk is retailed in bottles.

(9) When a sample of milk is being obtained for purposes of submission to the Public Analyst for analysis, the dairyman should see that the whole of the milk in the churn or can is thoroughly mixed in order that the sample may be truly representative of the whole.

(10) Where an "appeal to cow" is to be made, a number of samples should be obtained with a view to obviating, as far as possible, day-to-day

variations.

It must be remembered that the standards laid down in the Sale of Milk Regulations are presumptive and not absolute, and as genuine milk is not infrequently found to be below the standards, many so-called "appeals to cow" have been carried out. This is a procedure not always satisfactory, either to the producer or consumer, and there is an urgent need for a more exac method of detecting adulteration. At the present time a producer is liable to conviction when milk is below the presumptive standards if he is unable to prove that it has not been adulterated, even though, in fact, it is genuine milk.

#### APPENDIX C

# TEST APPLIED TO MILK!

For the purpose of chemical analysis, samples of milk are examined by the Gerber Process, which briefly is carried out as follows:

### EXAMINATION OF MILK BY THE GERBER PROCESS

# Technique-

- (1) Mix the milk thoroughly.
- (2) Take specific gravity with lactometer.
- (3) Take 10 ml. standard H<sub>2</sub> SO<sub>4</sub>.
- (4) Put into special "Gerber" test bottle.
- (5) Take 1 ml. of standard amyl. alcohol.
- (6) Put into same bottle.
- (7) Take temperature of milk in Fahr.
- (8) Add 11 ml. of the milk to be tested to the Gerber bottle.
- (9) Thoroughly mix H<sub>2</sub> SO<sub>4</sub>, amyl. alcohol and milk in the bottle by shaking.
- (10) Put test bottle in rotary machine or centrifuge.
- (11) Spin for approximately 4 minutes, according to temperature.
- (12) Remove bottle form centrifuge and read off fat directly, which will have separated off in the top, graduated portion, of the bottle.

The percentage of solids non-fat is obtained by calculation, using the formula—

$$S.N.F. = \frac{1}{2}S.G. + \frac{1}{5}$$
 Fat  $+0.14$ 

At standard temperature of 69° F.

Adjustment for temperature—

8º Fahr.=1º Lactometer.

# Example:

S.N.F.=
$$\frac{1}{4} \times 33.87 + \frac{1}{5} \times 3.0 + 0.14$$
  
= $8.47 + 0.6 + 0.14$ 

=9.21 per cent.

#### Therefore:

Sample contains 3:0 per cent milk fat and 9:21 per cent colids non-fat.

<sup>1.</sup> Stewart Swift: Food and Drug Administration.

Milk and certain other dairy products (e.g. ice-cream, cream) are hequently sampled for bacteriological examinations; other foodstuffs rately so, except in special circumstances, such as an outbreak of food poisoning.

Milk is examined bacteriologically for the following purposes:

- (1) Detection of pathogenic organism, e.g. tubercle bacilli, brucella, abortus, etc., and
- (2) Ascertainment of the cleanliness or keeping quality of milk.

In short, it determines the safety and keeping quality of milk.

The following tests are applied to milk other than those concerned with its chemical composition:

- (1) Methylene blue test;
- (2) Coliform test;
- (3) Phosphatase test;
- (4) Plate count test;
- (5) Resazurin test;
- (6) Biological test for tubercle bacilli; and
- (7) Sediment test.
- (1) Methylene blue test. The official instructions given in Ministry of Health (U. K.) Memo. 139/Food Bacteriological Tests for graded milk, Jan. 1937, paragraphs 12-16, for carrying out this test on raw designated milk are as follows:
- 12. The reliability of the results of the methylene blue test depends upon the strict observance of the directions given below:

# APPARATUS REQUIRED:

13. (a) Methylene blue—Standard methylene blue tablets¹ must be used in carrying out the test. From these a standard solution of methylene blue is prepared in the following manner: One tablet is added to 200 ml. of cold sterile glass-distilled water in a sterile flask which is then shaken until the tablet is completely dissolved. After the tablet has dissolved the solution is made up to 800 ml. with cold sterile glass-distilled water and is stored in a cool, dark place. If the solution is to be used for longer than a week, evaporation should be prevented by closing the flask with a rubber bung.

The solution remains stable in the dark for a considerable time but no stock solution more than two months old should be used.

(b) Test-tubes—Test-tubes conforming to the British Standard Specification 152/16, nominal 6" × 5'8, having an internal diameter of 13:5—0:5 mm. and an etched mark indicating 10 ml. are to be used. The test-tubes are plugged with cotton-wool or, preferably, covered with closely fitting aluminium caps (23 mm. long by 17 mm. broad external diameter). They are sterilized

<sup>1.</sup> Traces of impurities normally present in much lene blue seriously affect the relited of the test. It is exential, thereture that only especially prepared standard methylene blue tablets should be

used for this test. The names of manufacturers who supply such tablets may be obtained on application to the Ministry of Health.—Note p. 3, Memo. 139/Foods (Jan. 1937).

before use in an autoclave at a pressure of 15 lb. per square inch for 20 minutes or by exposure in a hot-air oven to a temperature of 160° C for two hours. If not to be used directly after sterilization they should be kept in closed boxes to protect them from dust.

- (c) Rubber stoppers These are supplied so made as to fit the test-tubes. They should be sterilized by immersion in boiling water for five minutes immediately before use.
- (d) Water bath -A metal water bath fitted with a metal cover and containing a test-tube rick is required, in which the test-tubes containing the milk samples can be immersed. The water in the bath must be kept above the level of the milk in the test-tubes and its temperature, which must be between 37° C and 38° C, should be maintained as nearly uniform as possible by means of a reliable automatic thermo-regulator. The interior of the bath must be completely dark.
- (c) Pipettes—One ml. straight-sided blow-out delivery pipe tes should be used for measuring the methylene blue solution, and these should preferably comply with the following specification:

Overall length
External diameter
Internal diameter
Graduation

Distance of graduation from tip Distance of graduation from top 300 mm.

7.5 to 8.5 mm.

2.6 to 3.0 mm.

I mark only at I ml. level.

140 to 180 mm. 120 to 160 mm.

The pipettes should be calibrated to deliver 1 ml. of water at 20° C when the contents are blown out with the tip touching the side of the vessel, 3 seconds allowed for drainage, and the accumulated drop then blown out. No pipette should have an error of more than 2 per cent that is the amount delivered should be between 0.980 ml. and 1.020 ml.

The pippetes should be plugged with cotton-wool at the upper end, placed in a metal pipette tin or wrapped in kraft paper and sterilized in a hot-air oven at a temperature of 160° C for two hours. The same pipette may be used for adding the methylene blue solution to successive tubes: it may conveniently be operated by a rubber teat. If large numbers of tubes are being put up, it may be found convenient to add the methylene blue solution by means of an automatic all-glass lend, delivery pipette.

# MIXING OF MILK IN SAMPLE BOTTLES PRIOR TO EXAMINATION:

- 14. (a) A sample collected in a special sampling bottle should be treated in the following way. If the bottle is filled to the level of the stopper, it should be inverted 25 times by a rapid rotatory movement of the wrist in order to mix the cream uniformly with the milk. About one-panter of the contents of the lottle should then be poured away and the bottle shaken 25 times, each shake being an up-and-down movement with an excursion of about 1 flot, the whole shaking lasting about 12 seconds. If the bottle is not completely filled it can be shaken directly in the way just described.
- (b) A sample in a scaled bottle or carton should first or all be inverted 25 times by a rapid rotatory movement of the wrist, the cap should be removed with sterile forceps, the whole contents should be poured rapidly into a sterile

capped or stoppered bottle of larger capacity, and this should then be shaken in the way described above.

#### METHOD OF CARRYING OUT THE TEST:

- 15. Thoroughly mix the sample of milk by inverting and shaking the sample bottle as described above and then pour the milk into a test-tube up to the 10 ml. mark. In doing this the stopper or cap of the bottle should be removed with aseptic precautions, the pouring-lip of the bottle thoroughly flamed with a Bunsen burner, the cotton-wool plug or the aluminium cap of the test-tube removed, the mouth of the test-tube flamed with a Bunsen burner and the milk rapidly poured into the tube up to the 10 ml. mark. In pouring into the tube care should be taken to leave one side of the interior unwetted with milk. One ml. of methylene blue solution is then added to the tube from a pipette, care being taken that the pipette does not come into contact with any of the milk in the tube or with the wetted side of the interior of the tube. If this should occur the pipette must be immediately discarded. During delivery the tip of the pipette should be held against the dry side of the tube about \frac{1}{2} to I inch above the level of the milk and the methylene blue solution expelled by blowing with the mouth or by means of a teat on the pipette. After the lapse of 3 seconds the solution remaining in the tip of the pipette should be blown out, and the pipette withdrawn. The tube is then closed with a sterile rubber stopper held and inserted by sterile forceps or by the tips of the fingers on its extreme upper end. On no account must the fingers be allowed to come into contact with the mouth of the test-tube or with the end of the stopper which comes into contact with the test-tube. The tube is then inverted slowly once or twice, so that the whole column of contained air rises above the level of the milk, and placed within 5 minutes in the water bath.
- 16. With each batch the following control tubes should be put up: (a) 10 ml. of mixed milk +1 ml. of tap water, (b) 10 ml. of mixed milk +1 ml. of methylene blue solution. Both control tubes (a) and (b) should be fitted with stoppers in the usual way and immersed for 3 minutes in boiling water in order to destroy the natural reducing system present in the milk. Comparison of the experimental tubes with control tube (b) will show when decolourization is beginning and comparison with control tube (a) will show when it is complete.
- 17. The tubes must be inspected at half-hourly interval. At these inspections (1) any tube that has reached the end point (as defined below) should be removed from the rack, (2) any tube that shows commencing decolourization should be left until the end point is reached, and (3) all other tubes should be inverted once.
- 18. The reduction (decolourization) of the methylene blue is brought about by the combined action of the micro-organisms and of reducing substances that are naturally present in raw milk. Since these reducing substances are closely bound up with the fat globules, it is very important that the cream should be kept distributed as evenly as possible throughout the milk; if it is allowed to rise and collect at the top, reduction in the main body of the milk will be delayed. It is for this reason that half-hourly inversion of the tubes must be carried out. Any departure from this practice will result in an alteration of the reduction time and consequent invalidation of the result.
- 19. The milk is to be regarded as decolourized when the whole column of milk is completely decolourized or is completely decolourized up to within

5 mm. of the surface. The test is then finished. If a trace of colour persists at the bottom of the tube and does not extend upwards for more than 5 mm. it may be ignored. The time (within the prescribed limit) at which decolourization is observed should be recorded. Where a tube is found not to be decolourized within the prescribed time, the sample satisfies the test.

- 20. It is important that the methylene blue solution when not in use should be kept in the dark; it should at no time be exposed to sunlight.
- 21. The amount of methylene blue required for a day's work should be poured off from the stock bottle into a suitable glass container. On no account should the pipette used for transferring the methylene blue solution to the tubes of milk be introduced into the stock bottle. Moreover, if at any time during the filling of the tubes the methylene blue solution should become contaminated with milk carried into it by a pipette which has inadvertently come into contact with the milk, the methylene blue solution should be immediately discarded and replaced by a fresh supply.
- 22. It is essential that the interior of the water bath during the progress of the tests should be completely dark, since sunlight, diffused daylight and even artificial light catalyse the reduction of methylene blue. The tubes should not be exposed to direct sunlight during the half-hourly inspections.
- 23. The design and construction of the water bath including the thermoregulator must be such as to ensure the maintenance of a uniform temperature of 37° C to 38° C during the test.
- 24. When a number of tests are being carried out it is convenient to place the test-tubes in a rack provided with a metal top to hold them in position so that at the half-hourly intervals all the test-tubes can be simultaneously inverted by merely inverting the rack.
- 25. The preclutions against adventitious contamination of the milk sample described in the method for carrying out the test must be carefully observed.
- 26. The sterilization of the rubber stoppers for the test-tubes and their subsequent satisfactory manipulation can be facilitated by employing a simple rack for holding a large number of rubber stoppers immersed in a suitable vessel of boiling water.

\* \*

The tests for heat-treated milk have been prescribed by the Ministry of Health (U. K.) in the Heat-Treated Milk (Prescribed Tests) Order, 1941, as follows:

- "2. The tests to be satisfied as aforesaid shall be a phosphatase test and a methylene blue test which shall respectively be carried out in the manner following:
  - (a) The phosphatase test shall be carried out in accordance with Part I of the Schedule hereto. Such tests shall be deemed to be satisfied by milk giving a reading of 2. 3 Lovibond blue units or less.
  - (b) The methylene blue test shall be carried out in accordance with Part II of the said Schedule. Such test shall be deemed to be satisfied by milk which fails to decolourize methylene blue in thirty minutes. The milk to be tested shall be kept at atmos-

<sup>1.</sup> S. R. and O., 1944, No. 349.

pheric shade temperature until it reaches the laboratory and shall there be kept at atmospheric shade temperature not exceeding 65°F, until the test is begun. The test shall be begun not earlier than nine in the forenoon and not later than ten in the forenoon on the day after the sample has been taken.

#### Schedule

#### PART I—THE PHOSPHATASE TEST

REAGENTS:

Buffer-substrate.—Buffer substrate solution must be prepared at the strength of 1.09 gm. of disodium phenyl phosphate and 11.54 gm. of sodium diethyl barbiturate in I litre of distilled water satura ed with chloroform. Alternatively, buffer-substrate tablets may be used to make up a solution of the same strength and a few drops of chloroform added. The solutions must be kept in a cool, dark place and must not be kept longer than three days.

Test-reagent—Add I volume of Folin and Ciocalteu's reagent to 2 volumes of a 5 per cent solution of sodium hexametaphosphate.

METHOD OF CARRYING OUT THE TEST :

To 10 ml. of the buffer-substrate solution contained in a test-tube, add 0.5 ml. of well-mixed milk. Add 3 drops of chloroform, stopper the tube, mix the contents and incubate at 37+18C for 24+2 hours. At the en l of this time, cool, add 4.5 ml. of the test reagent, mix, allow to stand for 3 to 5 minutes and filter into a test-'ub: marked at 10 ml. To 10 ml. of the filtrate, add 2 ml. of a 14 per cent solution of pure anhydrous sodium carbonate, mix and place the test-tube for exactly 2 minut's in boiling water (kept boiling). Cool, and read the colour, using a comparator or a tintometer.

Control tests - Keep the remainder of all milk samples in the refrigerator. After completing the test carry out control tests on thos: sample: which have

given a positive phosphatase reaction.

Mix thoroughly to 10 ml. of the buffer-substrate solution with 4.5 ml. of the test reagent, add 0.5 ml. of mik and mix. Allow to stand for 3 to 5 minutes, and filter into a test-tube marked at 10 ml. To 10 ml. of the filtrate, add 2 ml. of the sodium carbonate solution, mix and place the tube for exactly 2 minutes in a boiling water bath (kept boiling). Cool and read the colour developed. The colour must not exceed 1.5 Lovibond blue units.

Precautions—(a) Phenols, disinfectants containing phenols and soap containing carbolic acid must be kept at a safe distance from the test reagent; and

apparatus;

(b) the use of bottle caps made from phenolic resins must be avoided; (c) new rubber stoppers must be tested for phenolic impurities before

(d) all glassware must be clean;

- (e) contamination of pipettes by saliva must be avoided: (f) a fresh pipette must be used for each sample of m lk;
- (g) all reagents must be kept in a cool, dark place and well protected

(h) tests must not be carried out in direct sunlight;

(i) freshly-boiled distilled water must be used throughout;

(j) samples which show a taint or clot on boiling must not be tested. TEST OF REAGENTS:

The purity of reagents must be tested by performing a blank test without milk, with each batch of samples tested. The colour must not exceed 3.5

# PART II—THE METHYLENE BLUE TEST

SAMPLING:

Except where a sample consists of an unopened bottle or carton, the milk to be sampled must be well mixed and the sample must be collected with aseptic precautions in a sterile bottle.

REAGENTS AND APPARATUS:

- (a) Methylene blue—Tablets manufactured under arrangements made by the Ministry of Health must be used. Add one tablet to 200 ml. of cold sterile glass-distilled water in a sterile flask and shake until the tablet is completely dissolved. After the ablet has dissolved make up the solution to 800 ml. with cold sterile glass-distilled water and store in a stoppered flask in a cool, dark place. The solution must be stored in the dark and not kept for longer than two months. When in use it must at no time be exposed to sunlight.
- (b) Test-tubes—Test-tubes conforming to the British Standard Specification 152 16, nominal 6"×5,8", having an internal diameter of 13.5 × 0.5 mm. and an etched mark indicating 10 ml. must be used. Test-tube must be plugged with cotton-wool, covered with closely fitting aluminium caps, or otherwise stored so as to avoid contamination.
  - (c) Rubber stoppers—These must be sterilized before use.
- (d) Pipettes—One ml. straight-sided blow-out delivery pipettes must be used for measuring the methylene blue solution. The pipettes must be plugged with cotton-wool at the upper end, and be sterilized.

  METHOD OF CARRYING OUT THE TEST:

Thoroughly mix the sample of milk by inverting and shaking the sample bottle and pour the milk into a sterile test-tube up to the 10 ml. mark, leaving one side of the interior unwetted with milk. Add 1 ml. of methylene blue solution without letting the pipette come into contact with the milk in the tube or with the wetted side of the interior of the tube. After the lapse of 3 seconds, blow out the solution remaining in the tip of the pipette. Close the tube with a sterile rubber with aseptic precautions. Invert the tube slowly twice so that the whole column of contained air rises above the level of the milk, and place within 5 minutes in a water bath. The water in the bath must be kept above the level of the milk in the test-tubes, and its temperature, which must be 1 etween 37°C and 38°C, must be maintained as nearly uniform as possible by means of a reliable automatic thermo-regulator. The interior of the bath must be kept completely dark.

To show when decolourization is complete a control tube must be used with each bath for comparison with the experimental tubes. The control tube is prepared by immersing in boiling water for 3 minutes a stoppered test-tube containing 10 ml. of mixed milk from a number of samples 1 ml; of tap water. The milk used for the control tubes must be approximately of the same fat-content and colour as that being tested.

The milk is to be regarded as decolourized when the whole column of milk is completely decolourized or is completely decolourized up to within 5 mm. of the surface. A trace of colour at the bottom of the tube which does not extend upwards for more than 5 mm. may be ignored.

Precautions—The methylene blue solution when not in use must be kept in the dark; it must at no time be exposed to direct sunlight.

The amount of methylene blue required for a day's work must poured off from the stock bottle into a suitable glass container. The pipette

used for transferring the methylene blue solution to the tubes of milk must not be introduced into the stock bottle.

Where the methylene blue test is applied to heat-treated milk, samples should be taken on the day of retail delivery, and should consist of an unopened bottle, or, in the case of loose milk, be obtained from the container from which the milk is passed to the consumer. Samples should not be packed in ice for transport to the loboratory but should be protected from the direct rays of the sun. The sample is kept at atmospheric shade temperature both in transit and in the laboratory, until between 9 and 10 a.m. on the day following sampling.1

(2) Coliform Test—The official directions for carrying out this test are as follows, but it should be noted that in accordance with Circular 10/46 of the Ministry of Health, U. K.,2 issued in connection with the Milk (Special Designation) Regulations, 1946,3 this test is not now carried out on designated milk.

Ministry of Health (U.K.) Memo. 139/Foods—Bacteriological Test for

Graded Milk, Jan. 1937.

# Paragraphs 27 to 34

- 27. Samples should be examined in accordance with the following directions: APPARATUS REQUIRED:
- 28. (a) Culture medium tubes—Test-tubes for holding culture medium conforming to the British Standard Specification 152/16 nominal 6" × 5/8" having an internal diameter of 13.5+0.5 mm. should be used. Each tube should contain an inverted Durham tube conforming to the British Standard Specification 35/8 nominal  $1.3/8'' \times 5/16''$ , having an internal diameter of 7 + 0.3 mm.
- (b) Dilution tubes-Test-tubes for dilution conforming to the British Standard Specification 152/19 nominal 6" ×3/4", having an internal diameter of 16.5 + 0.6 mm. should be used in the two-stage method of dilution described below. Both culture medium tubes and dilution tubes should be plugged with cotton-wool or preferably covered with closely fitting aluminium caps and sterilized in the way described under methylene blue test.
- (c) Pipettes—One ml. pipettes of type specified under the methylene blue test should be used.

Nine ml. pipettes with the following specification should be used: Overall length

360+10 mm.

Length of tapered portion forming jet 25 + 5 mm.

Distance between graduation mark and tip of jet 200 - 20 mm. Length of tube of smaller bore at top of pipette

 $50\pm5$  mm. External diameter of pipette 105+0.6 mm.

External diameter of tube of smaller bore at top of

pipette 6.0 + 0.5 mm.

Circular 31/44, Ministry of Health, 327 April, 1944.
 18th January, 1946.
 S. R. and O., 1946 No. 10.

Wall thickness of tube of smaller bore at top of pipette

External diameter of jet to be at least

1.0 to 1.5 mm. 3 mm.

The pipettes should be calibrated to deliver 9 ml. of water at 20°C, when held in the vertical position and allowed to discharge by gravity in 5 to 10 seconds, the tip being touched against the side of the vessel 3 seconds after the falling column of fluid has come approximately to rest. No pipette should have an error of more than , I per cent, i. c. the volume of water delivered by a 9-ml. pipette should be between 8.91 and 9.09 ml.

The pipettes containing cotton-wool plugs at their upper ends should be sterilized in the way described under the methylene blue test.

29. MacConkey broth made according to the following formula is to be used:

MacConkey broth (single strength)—

Commercial sodium taurocholate 5 gm. Lactose 10 gm. Peptone 20 gm. Sodium chloride 5 gm. Distilled water ... 1,000 ml.

Steam for two hours and transfer to the ice-chest overnight. Filter in the morning through Chardin paper while still cold. Adjust the reaction to pH 7.4, using phenol red as the indicator. Add about 10 ml. of 1 per cent aqueous solution of neutral red.

Culture tubes with medium added-Distribute the MacConkey broth medium in 5 ml. quantities into the culture medium tubes provided with Durham fermentation tubes. Plug the culture medium tubes with cotton-wool or cover with aluminium caps and sterilize in an autoclave at a pressure of 10 lb. pe square inch for 15 minutes, or in a steamer for 30 minutes on three successive days. The medium in the finished culture tubes should be clear and should have a claret-red colour free from yellow or magenta. DILUENT:

30. Tap-water may be employed if it has been shown that it is free from any marked germicidal activity. Distilled water, if it has been distilled in glass and not in metallic stills, is also permissible. Preferably one quarter strength Ringer's solution should be used.

Ringer's solution (full strength)—

Sodium chloride 9.0 gm. Potassium chloride 0.42 gm. Calcium chloride 0.48 gm. Sodium bicarbonate 0.2 gm. Distilled water 1,000 ml.

The one-quarter strength solution should be sterilized by autoclaving 20 minutes at a pressure of 15 lb. per square inch.

#### METHOD OF CARRYING OUT THE TEST:

31. Filling the dilution tubes with diluent -- Nine ml. of sterile diluent are measured by means of a 9-ml. Pipette and delivered by gravity in the way already described [paragraph 28 (c) above] into each of the dilution tubes after these have been sterilized.

- 32. Making the dilution-After the milk in the sample bottle ha been thoroughly mixed as described under the methylene blu test two successive 1/10 dilution should be made in the sterile diluent in the dilution tubes in the following way: A scrile l ml. pipette should be int oduced into the sample bottle of milk with its tip reaching not more than ! to I inch I clow the urface of the milk. The milk should be sucked up and down ten time. to the 1 ml. mack and 1 ml. of milk should then be meast red cut, holding the pipe te in a vertical position. The pipette should be withdrawn, he tip being touched against the ne.k of the bot le to remove excess milk dheri g to the outside; it should then be introduced into the first test-tube of the diluing series with the tip touching the side of the tube at a point abou 1 to 1 in h above the level of the diluent. It is important that the pip-tte should not come into contact with the diluting fluid. The milk should then be blown out, 3 se conds should be allowed to clapse for drainage, and the remaining contents blown out. The pipe te should then be discarded. A fresh pipette should be introduced into the lin 10 dilution, with its tip reaching not more than I to I inch below the su face of the diluent, the fluid sucked up and down ten times to the I ml. mark, I ml. measured out with the pipet e in the vertical position, the pipette removed from the fluid, its tip being touched against the side of the tube about 1 inch below the rim so as to remove any excess adhering to the outside, the pipette transferred to the second tube of the diluting series, introduced with its tip touching the side of the tube about to I inch above the level of the diluent, and the contents expelled in the manner described above.
- 33. Inoculation and Incubation of the culture tubes containing MacConkey broth—Take a fresh l ml. pipette, introduce it ½ to l inch below the level of fluid in the 1/00 dilution of milk, suck up and down 10 times and then transfer l ml. portions to each of 3 culture tubes containing MacConkey broth, using the same technique as described under making of dilutions (paragraph 32 above). Incubate the culture tubes at 37°C for 48 hours and then examine for acid and gas production.

#### STANDARDS:

- 34. The milk is regarded as satisfactory in respect of this test if two out of the three tubes are found to be free from acid plus gas after 48 hours' incubation.
- (3) **Phosphatase Test.** The following directions for carrying out this test are prescribed.<sup>1</sup>

Ministry of Health (U. K.): Memo. 139/Foods-Bacteriological Test for Graded Milk, Jan. 1937.

#### Addendum-March 1943

The reliability of the results of this test depends upon the strict observance of the dricctions given below. A negative result indicates that the milk has been sufficiently heated to destroy all the common pathogenic organisms. Samples kept at room temperature should preferably be examined within 18 hours of having been heat treated, but may be kept longer in a cold store at 32° to 40° F. If so, they should be raised to room temperature before being tested. Samples which show a taint or clot on boiling should not be tested.

<sup>1.</sup> See also Kay, H. D. and Graham, W. R., Journal Dairy Resear h, Vol. VI. No. 2, p. 191; and "The Phosphatase

Test for Control of Efficiency of Pasteurisation," Imp. Bur. Dairy Sci. Tech. Commun No. 1, 1939.

# PRECAUTIONS:

- (a) Phenols, disinfectants containing phenols and soap containing carbolic acid must be kept at a safe distance from the test reagents and apparatus.
- (b) The use of bottle caps made from phenolic resins must be avoided.
- (c) Rubber stoppers may contain phenolic impurities and fiesh batches must, therefore, be tested before use.
- (d) All glassware must be carefully cleaned and rinsed thoroughly before use. Cleaning in chromic acid is strongly recommended.
- (e) Contamination of pipettes, etc., by saliva, which is known to contain conside able amounts of phosphatase, must be avoided.
- (f) A fresh pipette must be used for each sample of milk in order to avoid contamination by raw or insufficiently heated milk.
- (g) All reagents must be kept in a dark, cool place and well protected from dust.
- (h) Tests must not be carried out in direct sunlight.
- (i) Freshly boiled distilled water must be used throughout.

#### REAGENTS:

Buffer-substrate—Dissolve 1.09 gm. of disodium phenyl phosphate and 11.54 gm. of "sodium verenal" (sodium diethyl barbiturate) in distilled water saturated with chloroform and make up to l litre Alternatively, use buffer-subtrate tablets.¹ Either dissolve one tablet in 50 ml. of distilled water saturated with chloroform, or alternatively, add one tablet to about 45 ml. of boiling distilled water, boil the solution for exactly l minute, cool rapi lly and make up to 50 ml. with boiled distilled water. Add a few drops of chloroform to prevent the growth of micro-organisms and keep in the refrigerator. Solutions should be discarded after three days.

Felin and Ciocalteu's phenal reagent (stock 2. Dissolve 100 gm. of sodium tungstate Na2, Wo4, 2 H2 O and 25 gm. of sodium molybdate, Na2, MoO4, 2 H<sub>2</sub>O, in 700 ml. of water in a 1,500 ml. flask connected, preferably by a groundglass joint, with a reflux condenser. Add 50 ml. of syrupy (85 per cent) phosphoric acid and 100 m!, of cone ntrated hydrochloric acid. Reflux the mixture gently for 10 hours. (If an all-glass connection between flask and condenser is not available, use a rubber stopper or cork wrapped in tinfoil. Take the greatest care that the solution does not come in contact with the tinfoil.) After 10 hours, cool, add 150 gm. of pure lithium sulphate, 50 ml. of water and a few drops (usually 4-6) of liquid bromine, and leave for 2 hours. Then boil the mixture under the hood without the condenser for 15 minutes to get rid of excess bromine. Cool, dilute to I litre and filter. The finished reagent should have a golden yellow colour with no greenis; tint. Any reagent with a greenish tint should be rejected. Keep in a refrigerator and protected from contact with dust, metal, etc., and any reducing sub tance. The reagent is usually quite stable for at least four months.

Sodium-hexametaphosphate<sup>3</sup>.—Use the salt in the form of flakes and sift in order to remove any white powder which has formed during storage. Always keep in a tightly stoppered bottle. Prepare a 5 per cent solution (weight per volume) by dissolving in warm water and making up to volume after cooling.

<sup>1.</sup> It is essential that only specially prepared standard reagents or tablets be used for the test. The names of manufacturers who supply such reagents or tablets may be obtained on application to the

Ministry of Health, U, K. Division III H.

<sup>2.</sup> Ibid.

<sup>3.</sup> Ibid.

Test-reagent—Add one volume of the stock solution of Folin and Cio-calteu's reagent to 2 volumes of the hexametaphosphate solution. The mixture is stable for several weeks.

Sodium carbonate—Make up a 14 per cent. solution (weight per volume) of pure anhydrous sodium carbonate. It is advisable to standardise this solution by titration.

#### APPARATUS:

- (a) A water bath or incubator maintained at 37 ± 1°C.
- (b) A graduated pipette or an automatic burette to deliver 4.5 ml. The latter should be made from dark glass or should be painted a dark colour.
- (c) A number of grade A 1.0 ml., straight-sided pipettes, accurately marked at 0.5 and 1.0 ml. These should be plugged with cotton-wool;
- (d) A number of test-tubes conforming to British Standard Specification No. 625 (1935) 152/16, accurately marked at 10 ml., with rubber stoppers to fit. Before use these test-tubes should be cleaned in chromic acid 1;
- (e) A number of filter funnels, 5 cm. diameter;
- (f) Whatman filter papers, 9 cm. No. 40;
- (g) Either a Lovibond comparator with cell marked at 25 mm. and with disc containing standard coloured glasses corresponding to 0.5, 1.5, 2.3 and 6.0 Lovibond blue units, or a Lovibond tintometer with 13 mm. cell.

#### DETERMINATION:

Tests should always be carried out in duplicate. To 10 ml. of the buffer-substrate solution contained in a test-tube, add 0.5 ml. of the well-mixed milk. Add 3 drops of chloroform, stopper the tube, mix the contents and incubate at  $37\pm1^{\circ}\mathrm{C}$  for 24 two hours. At the end of this time, cool, add 4.5 ml. of the test reagents, mix, allow to stand for 3 minutes and filter into a test-tube marked at 10 ml. To 10 ml. of the filtrate add 2 ml. of the sodium carbonate solution, mix and place test-tube for exactly 2 minutes in boiling water (kept boiling). Cool and proceed to read the colour thus developed, using either the comparator or the tintometer.

#### CONTROL TESTS:

Keep all milk samples in the refrigerator for 24 hours after the duplicate experimental tubes have been put into the incubator.

After completing the test proper carry out control tests on these samples which have given a positive phosphatase reaction.

Proceed as follows: Mix thoroughly 10 ml. of the buffer-substrate solution with 4.5 ml. of the test reagent, add 0.5 ml. of milk and mix. Allow to stand for 3 minutes, and filter into a test tube marked at 10 ml. To 10 ml. of the filtrate add 2 ml. of the sodium carbonate solution, mix and place the tube for exactly 2 minutes in a boiling-water bath (kept boiling). Cool and

1. Chromic acidmay be prepared as follow: Dissolve 90 gm. of powdered potassium bichromate in 200 ml. of hot water contained in a 1-litre conical flask. Cool and add 2 litres of commercial sulphuric acid 90 per cent or more). Stir unit the precipitate has dissolved. Keep the

solution covered and diseard when it becomes green.

2. If an automatic burette is being use I for delivery of the test reagent, and has stood full of the reagent for more than 24 hours, the first two emptying of the burette should be discarded.

proceed to read the colour thus developed. The colour should not exceed 1.5 Lovibond blue units.1

### INTERPRETATION:

Milks which give readings of 2.3 Lovibond blue units or less should be classified as "giving a negative phosphatase" test," or as "sufficiently heat-treated," those giving reading, between 2.5 and 6.0 Lovibond blue units as "insufficiently heat-treated," whilst those giving readings greater than 6.0 Lovibond blue units should be reported as "grossly unfer-heated." Raw milk gives more than 30 Lovibond blue units. If a positive phosphatase test—i. e, a reading of more than 2.3 Lovibond blue units—is obtained it is not possible on the basis of this finding alone to decide whether the cause is too low a temperature or to too short a holding time, or the addition of raw milk.

(4) Plate Count Test.—The official directions for carrying out this test are as follows:

Ministry of Heal h (U. K.) Memo. 139 Foods—Bacteriological Tests for Graded Milk—Jan. 1937.

# Paragraphs 35 to 45

35. Samples should be examined for their bacterial content per 1 ml. in terms of numbers of bacterial colonies developing when measured quantities are mixed with nutrient agar and incubated in accordance with the following directions.

# APPARATUS REQUIRED:

36. (1) Dilution tubes—as for the coliform test.

(2) Pipettes—1 ml. and 9 ml. pipettes as for the coliform test.
(3) Petri disher —British Standard Specification No. 611, 1935.

(4) Test tubes—as for the methylene blue test.

(5) Water-jacketed incubator at 37° C.

# DILUENT REQUIRED:

37. As for the coliform test.

CULTURE MEDIUM REQUIRED:

38. Yeastrel (manufactured by Brewers' Food

Supply Co. Ltd., Edinburgh)	3 gm.
B. D. H. or equivalent Peptone	5 gm.
Washed shreded agar	15 gm.
Fresh whole milk	10 ml.
Distilled water	1.000 ml.

Dissolve the yeastrel and peptone in distilled water in the steamer and adjust the reaction at room temperature to pH 7.4, uting phenol red as the indicator. Wrap the shredded agar in muslin and wash in running celd water for 15 minutes. Squeeze out of the excess water and add the agar together with the freshly shaken milk to the broth. Autoclave at a pressure of 15 lb. per square inch for 20 minutes, and filter through paper pulp in a Buchner funnel. Egg must not be used for clearing. The pulp is prepared by mashing up small pieces of "Postlip" or "White Heather" paper in water by means

technique. If it occurs in two or more different samples of milk examined at the same time, a control value of over 1.5 units is almost certainly due to faulty reagents or techniqe.

<sup>1.</sup> A control value of over 1.5 Lovibond blue units is rare, but indicates either the presence of phenolic substances (or of other adventitious contamination) in the milk or faulty reagents or faulty

of a pestle and mortar. A single layer of Chardin filter paper should be laid on top of the Buchner funnel to prevent the pulp being sucked through, and the pulp itself should then be packed down evenly on top of it. The funnel should be inserted into an Erlenmeyer filtration flask fitted with a sidepiece. A filter pump should be applied to such though the excess water which should be poured off through the side-piece. The filter, when ready for use, should have a total depth of about 1.5 mm. A pulp layer of suitable and approximately the same depth for any size of funcel may be obtained by pulping an area of dry "Postlip" filter paper equal to four times the square of the diameter of the funnel. With "White Heather" brand, 1 gm. of the dry paper is required for every 20 sq. cm. of funnel. Thus for a 25 cm. diameter funnel, 25 gm. of paper are required; for a 12.5 cm. funnel, 6 gm., and so on. The agar is taken directly from the autoclave and filtered hot, the whole apparatus being kept warm by a surrounding atmosphere of steam. The reaction of the filtrate is tested at 500 C and adjusted, if necessary, to pH 7.0. The medium is tubed in 10 ml. quantities and autoclaved at a pressure of 15 lb. per square inch for 20 minutes. The final reaction of the medium at room temperature should be pH 7.2. DILUTIONS:

39. Dilutions of 1/10, 1/100 and 1/1000 of the milk sample, which has previously been thoroughly mixed in the way described for the methylene blue test are to be made in the manner and with the diluent described for the coliform test (paragraphs 30, 31 and 32 above) except that an additional dilution, the 1/1000 dilution is to be made from the 1/100 dilution.

#### PLATING:

- 40. A fresh sterile 1 ml. delivery pipette should be introduced into the tube containing the highest dilution, with its tip not more than ½ to inch below the level of the fluid. The fluid should be sucked up and down ten times, the contents discharged completely, a fresh 1 ml. quantity measured out, the pipette withdrawn, the tip touched against the side of the tube about ½ inch belown the rim so as to remove any exce-s adhering to the outside, the contents blown out gently into the centre of a sterile Petri dish, the tip of the pipette being held about ½ inch above the level of the glass, 3 seconds allowed to elapse, the tip of the pipette touched against the dish at a point some distance from the fluid already delivered, and the last drop blown out. The same pipette may be used for each dilution, provided the plates are inoculated in order from the highest to the lowest dilution. It is sufficient to suck the fluid up and down three times in each dilution before measuring out the 1 ml. quantities for plating except for the highest dilution whi h requires to be sucked up and down ten times for mixing purposes.
- 41. An alternative method which is somewhat quicker, is to inoculate the plates at the same time as the dilutions are made. After the 1 ml. quantity has been taken over to the next tube of diluent, the pipette may be used for inoculating the Petri dish corresponding to the dilution in which it has been washed out.
- 42. A sufficient number of tubes containing 10 ml. of standard milk agar are boiled up and cooled down to 45° C. The contents of one tube are delivered under sterile conditions into each Petri dish. Immediately the medium is delivered, mixing should be performed by a combination of rapid to-and-fro shaking and circular movements lasting 5 to 10 seconds, the plate being kept flat on the bench throughout the whole process. The exact procedure consists in five to-and-fro movements followed by five circular movements in a clockwise direction, succeeded by five to-and-fro movements at right angles to the first set followed by five circular movements in an anticlockwise

direction. After mixing, the p'ates should be allowed to stand for about an hour before being transferred to the incubator.

- 43. The time elapsing between the preparation of the dilutions and the pouring of the plates should not exceed 15 minutes.
- 41. The plates should be incubated bottom upwards for two days at 37° C. Water-jacketed incubators, preferably gas-heated, should be used, and the temperature in various parts of the incubator should be subject to frequent control. The plates may be piled in stacks, but unless a cellular incubator is used it is probably better not to make any stack more than six plates high. The incubator should be opened as little as possible during the two days.
- 45. A plate with more than 500 colonies should not be counted unless the plate made with the next higher dilution shows less than 30 colonies. If the plate made with the 1/1000 dilution contains more than 500 colonies it may be inferred that there are more than 500,000 colonies per ml. of milk. A plate with less than 30 colonies should not be counted unless it is made with the 1-10 dilution in which case it may be inferred that there are 10 times the number of observed colonies per 1 ml. of milk. Plates should be counted within 4 hours of removal from the incabator. The best method of counting is with a specially constructed box allowing of examination of the plates by combined reflected and transmitted artificial light against a dark background with a hand magnifying glass of 4 inches focal length magnifying 2½ diameters.
- (5) Resazurin Test. The official technique for this test, as laid down by the Ministry of Agriculture (U. K.), is as follows:
  - (a) TEN-MINUTE RESAZURIN TEST (PROVISIONAL TECHNIQUE)2

Preparation of Resazurin solution—Glass-distilled water should be used if possible. Tap water or water from block-tin-condensers may be used if it has been shown to give the same results as glass distilled water. The water must be sterilized by one of the following methods:

- (i) Autoclave at 1200 C for 15 minutes,
- (ii) Steam sterilize for 1 hour at 100° C, or
- (iii) Boil for 30 minutes.

When the water is cool, measure 50 ml into a clean sterile measure, e.g. a 1-inch boiling tube, flask or bottle marked at the 50 ml level. Add one resazurin tablet and shake to dissolve. This gives a 0.005 per cent bench solution. Alternatively, where approved by the Advisory Bacteriologist, 0.05 per cent stock solution may be diluted with sterile distilled water to produce the 0.005 per cent bench solution. A fresh batch of bench solution must be propared for each day's testing.

The resazurin must conform to the standards laid down. Representative tablets from each batch shall be submitted by the manufacturers to the Director, National Institute for Research in Dairying, Shinfield, near Reading for examination.

Method of testing—The test must be started as soon as possible after a group of samples have been taken, within half an hour of arrival at the creamery, and in any case within 30 minutes of sampling. A group will normally be the suspect samples from one lorry-load. Place the tubes in numerical order, left to right, in a rack. Remove the stopper from the first test tube in the rack,

<sup>1.</sup> Suitable boxes have been described by Mattick and Hiscox, Journal of Scientific Instruments, 1933, Vol. 10, p. 373 and by Wilson et al. in the Medical Research

Council's Special Report Series No. 206, p. 102.

<sup>2.</sup> Ministry of Agriculture and Fisheries, Form No. C 150/TPY.

proceeding from left to right, with the thumb and fingers of the left hand, taking care not to touch the mouth of the tube. Measure 1 ml. of the resazurin solution with a sterile, insert the pipette about half an inch into the mouth of the tube and expel the solution by blowing. Replace the stopper, mix by inverting the tube twice in 4 seconds and return to the rack. When resazurin has been added to a batch of not more than 5 tubes place immediately in the water bath and note the time.

Notes—(a) The delivery jet of the pipette must not touch the milk in the tube. Any pipette becoming contaminated must be immediately discarded.

(b) Use a fresh sterile pipette for every group of samples.

Incubation of samples—The temperature of the water bath is maintained at  $37.50 + C. \pm 0.50$  C. At the end of 10 minutes  $\pm$  30 seconds, remove the tubes from the water bath and immediately match the colour with the resazurin disc in the comparator recording the tubes in numerical order.

Examination of tubes—Place a control tube of mixed milk without dye in the left section of the comparator and the incubated tube in the right section. The comparator should face a good source of light (not direct sunlight) and preferably a north window. The comparator and stand are placed on a bench at such a height that the operator is able to look down on the two apertures. The disc is then revolved until the sample is matched and the disc reading noted. When the colour falls between two disc numbers, it shall be recorded as the half value, e.g. a reading between 3 and 4 shall be recorded as  $3\frac{1}{2}$ . Tubes giving a reading between 0 and 1—streaky pink or very pale pink—are recorded as  $\frac{1}{2}$ .

Note—An approved artificial daylight source of illumination should be used if it is impossible to use daylight.

General Precautions—(i) All testers must be examined by the Advisory Bacteriologist or his representative for ability to match the colours in the comparator.

- (ii) The control and experimental test-tubes should be of the same type and thickness of glass.
- (iii) Special control samples must be used for highly pigmented milk. (e. g. Guernsey milk).
- (iv) Resazurin solution, milk and milk to which resazurin has been added, must not be exposed to direct sunlight in the laboratory.
- (v) The level of the water in the bath must be maintained above the level of the milk in the tubes.
  - (vi) The water bath must be kept covered during the test.
- (vii) The temperature of the water bath must be checked commencing each batch of tests.
- (viii) Baths must be cleaned out and fresh water added at least once a week, and the racks scrubbed.

# STANDARDS FOR RESAZURIN AND RESAZURIN TABLETS:

Resazurin - The following standards have been provisionally adopted for the commercial product known as "resazurin":

- (i) It must contain sodium resazurate equivalent to 60 + 3 per cent free resazurin.
- (ii) No other dyestuff (apart from traces of sodium resuzurate) shall be present.

- (iii) The residue shall consist of sodium carbonate.
- (iv) It must give, a colourless water-clear solution on reduction in alkaline solution.
- (v) It must give, at a concentration of 1 in 200,000, in fresh normal mixed shorthern milk of 3-4 per cent fat, a tinton eter disc reading of not less than 6.
- (vi) The material must behave similarly to a standard preparation maintained at the National Institute for Research in Dairying.

Resazurin tablets—Tablets when dissolved according to instructions shall give a 0.005 per cent + 0.0005 per cent solution of "resazurin" having the abovenamed properties. Tablets must not contain any substance other than "resazurin" and lactose and must not give a plate count on Yeastrel agar at 37°C of more than 500 colonies per tablet.

(b) ROUTINE RESAZURIN TEST (PROVISIONAL TECHNIQUE)1

# Treatment of Samples

#### STORAGE:

The milk may be transferred to sterile  $6'' \times 5'8''$  test-tubes at any time prior to te ting, provided that the prescribed temperature conditions are observed. All times used will be B. B. C. times.

- P. M. and mixed (EMX) milk—Samples will be kept at atmospheric shade temperture from the time of sampling until 4 pm. on the day following production of the p.m. milk. In y samples which are not tested at 4 p.m. must be cooled by holding for 15 minutes in water not above 400 F. and then placed in a cold store or refrigerator at a temperature of 320-400 F. until 9 a.m. the following morning and then tested immediately. Testing of p.m. and mixed (LMX) milk should be carried out at 4 p.m. whenever possible.
- A. M. and mixed (EMX) milk—Samples will be held at atmospheric shade temperature until S a.m. on the day following production and then tested.

Atmospheric shade temperature-This is defined as the temperature in an approved well-ventilated box or cupboard on the outside wall on the north side of a building, so that it is at all times in the shade. The bottom of the box or cupboard should be not less than 3 feet from the ground. An approved maximum and minimum thermometer must be kept in this box or cupboard. The error of this thermometer must not exceed - 10 F. The minimum temperature read at 9 a.m. and the maximum temperature read at 4 p.m. or recorded daily in a log-book. Both styles must be reset at 9 a.m. and 4 p.m. For a.m. samples tested at 9 a.m. on the day following production take the arithmetic mean of the maximum temperature read at 4 p.m. on the previous day (i.e. the day of production) and the minimum temperature read at 9 a.m. on the day of testing. For p.m. samples tested at 4 p.m. on the day after production or at 9 a.m. on the following day take the arithmetic mean of the minimum temperature recorded at 9 a.m. and the maximum recorded at 4 p.m. both on the day after production. The following table gives the possible times of testing and the two temperature readings to be used for various classes of samples:

<sup>1.</sup> Ministry of Agriculture (U. K.), Form No. C-158/TPY.

App. C

Meal	Time of testing	Temperature readings
Evening milk (E)	(a) 4 p.m. day following date of production	9 a.m. minimum and 4 p.m. maximum on day following date of production
Ditto	(b) refrigerated at 4 p.m. on day following production until 9 a.m. next day.	Ditto.
Morning milk (M)	9 a.m. day following date of production.	4 p.m. maximum on date of production and 9 a.m. minimum on day following date of production.
Mixed milk in which the evening milk is the older (EMX).	Control of the contro	9 a.m. minimum and 4 p.m. maximum on day following date when evening milk was produced.  Ditto.
Mixed milk in which morning milk is the older (EMX).	9 a.m. day following day of production.	4 p.m. maximum on day of production and 9 a.m. minimum on day following production.

Should samples freeze during storage they must be placed in water at 180 C for not more than 30 minutes immediately before testing.

Mixing the sample.—The container is shaken 25 times, each shake being an up and down movement with an excursion of about 1 foot the whole shaking lasting about 12 seconds. A sample in a milk bottle or carton should be inverted 25 times by rapid rotary movement of the wrist.

Transferring the samples to test-tubes—After mixing, the milk is poured into a test-tube (6" × 5/8") etched at 10 ml. mark—B.S.S. 625-1935. In doing this the stopper or cap of the bottle must be removed with aseptic precautions, the pouring lip of the bottle flamed, the test-tube stopper removed, the mouth of the test-tube flamed and the milk poured into the sterile test-tube up to thours before testing the test-tubes containing the milk must be shaken immediately before testing as described above.

# Testing

# PREPARATION OF RESAZURIN SOLUTION:

Glass-distilled water should be used if possible. Tap water or distilled water from block-tin condensers may be used if it has been shown to give the same results as glass-distilled water. The water must be sterilized by one of the following methods:

(i) Autoclave at 1200 G for 15 minutes (preferable).

(ii) Steam sterilize for 1 hour at 100° C.

(iii) Boil for 30 minutes.

Methods (ii) and (iii) must be carried out within 24 hours of using the water.

Add one resazurin tablet (see Appendix¹) to 50 ml. cold sterile glass-distilled water in a clean sterile measure (a l-inch boiling tube, flask or bottle marked at the 50 ml. level) by allowing the tablet to fall from the container or by withrawal with sterile forceps. When completely disolved and mixed this gives a 0.005 per cent. bench solution. Alternatively where approved by the Advisory Bacteriologist, 0.05 per cent stock solution may be diluted with sterile water to produce the 0.005 per cent bench solution. The bench resazurin solution must not be used if more than 8 hours old, and when not actually being used must be kept, with aseptic precautions, in a cool, dark place.

### METHOD OF TESTING:

Place the tubes in numerical order, from left to right in a rack. Measure 1 ml. of the bench resazurin solution with a sterile pipette. Remove the stopper from the first test-tube in the rack, taking care not to touch the mouth of the tube. Insert the pipette about 1/2 inch into the mouth of the tube and expel the solution by blowing, taking care that the tip of the pipette does not touch the test-tube.

Replace the stopper, mix by inverting the tube twice in 4 seconds and return to the rack. When resazurin has been added to a batch of not more than ten tubes, place immediately in the water bath and note the time.

Notes—(a) Full aseptic precautions must be observed in these operations.

(b) Any pipette becoming contaminated with milk or otherwise must be discarded immediately.

(c) If the bench resazurin solution becomes contaminated with milk it must be discarded immediately.

(d) Use a fresh sterile pipette for every batch of ten samples.

(e) See alo General Precautions.

#### INCUBATION OF SAMPLES:

The temperature of the water bath must be maintained at 37.5±0.5° C. Tubes must be held in the bath for the time prescribed plus or minus one minute. Tubes incubated for 90 minutes and 120 minutes must be inverted at one hour.

#### EXAMINATION OF TUBES:

At the end of the incubation time remove and examine each tube. Any tube showing complete reduction, i.e., white, is recorded as 0. Any tube showing an extremely pale pink, pink and white mottling or a deeper pink band at the top above a paler pink below is recorded as ½. Other tubes are inverted and immediately matched in the comparator as follows:

Place a "blank" tube of mixed milk without dye in the left section of the comparator and the incubated tube in the right section. The comparator must face a good source of daylight, if possible a north window. Direct sunlight must not be allowed to fall on the comparator or tubes during matching. The comparator and stand are placed on a bench at such height that the operator is able to look down on the two apertures. The disc is then revolved until the sample is matched and the disc reading noted. When the colour falls between two disc numbers, it must be recorded as the half

value, e.g. a reading between 3 and 4 is recorded as 3½. Reading must be recorded immediately, tube by tube.

Note -An approved artificial daylight source of il umination may be used in the absence of satisfactory daylight.

#### GENERAL PRECAUTIONS:

(i) All testers must be examined by the Advisory Bacteriologist or his

representativ for ability to match the colours used in the comparator.

(ii) An initial reading immediately af or adding resazurin in good quality low-count milk should give a disc number of not less than 6, otherwise the resazurin solution is faulty and must be discarded.

(iii) Test-tubes used in the comparator should be of the same colour

and thickness of glass.

(iv) Appropriate "blank" samples must be used for highly pigmented milk (e.g. Guernsey milk).

(a) Resazurin solution, milk and milk to which resazurin has been added

must not be exposed to direct sunlight.

(vi) The level of the water in the bath must be maintained above the level of the milk in the tubes.

(vii) The water bath must be kept covered during the test.

(viii) The temperature of the water bath must be checked before commencing each batch of tests.

(ix) Baths must be cleaned out, the racks scrubbed and fresh water added at least once a week.

Washing and Sterilization of Equipment and Glassware

# WASHING GLASSWARE:

Immediately after use, rinse all glassware in cold or warm water (not above 120° F). Brush in hot detergent solution and rinse thoroughly in at least three changes of cold wa'er. Allow stoppers, pipettes and tubes to drain.

# STERILIZATION OF GLASSWARE AND DIPPERS:

All glassware must and dippers may be sterilized by one of the following methods, of which the first two are preferable:

(i) Hot-air oven—2 hours at 160?—170°C. Allow to cool before opening the door of the oven.

(ii) Autoclaye-15 minutes at 122°C (15 lb. pressure- or 1 atmos-

phere).

(iii) Steam sterilize—1 hour at 100°C (temporary expedient only. Use within 24 hours.

Apparatus must not be sterilized in closed metal containers by methods (ii) and (iii).

Unplugged tubes must be placed upside down in the wire basket u ed as a container. The pipettes may be placed in a pipette case for sterilization in the hot-air oven, a layer of glass-wool (not cotton-wool), being placed at the bottom to avoid damaging the pipette tips.

# STERILIZATION OF STOPPERS:

(a) When testing is carried out immediately—Sterilize the stoppers in boiling water for 10 minut s. A shallow water bath fitted with a preforated tray to take 30 or 50 stoppers may be used. Allow the test-tubes and stoppers

to cool and drain after sterilization, then insert the stoppers into the testtubes immediately after removal from the sterilizer so as to avoid risk of contamination of the mouth of the test-tube or of the narrow end of the stopper.

(b) When the sample is to be stored in bottle or test-tube—Rubber stoppers, presscaps and screwcaps for these containers shall be sterilized either by autoclaving as above, or by steaming as above, or by immersion in boiling water for 30 minutes.

In all cases stoppers must be inserted aseptically into the sterile bottle or test tube within 6 hours of sterilization.

Note - Rubber liners from presscaps and screwcaps must be removed from the caps and thoroughly washed after use. They are replaced in the caps prior to sterilization. Liners made from any other material (cork, black composition material or cardboard) must not be used more than once unless autoclaved. Liners must be inspected, and discarded at the first sign of deterioration.

Temperature, Compensation Scale and Interpretation of Results

TIME OF INCUBATION:

The period of incubation will be as follows:

Mean of maximum and minimum shade temperatures			Period of incubation at 37.5 ± 0.50 C
40 <sub>o</sub> F and	under		120 mins.
Over 40° F 3 ,, 50° F ,, 55° F ,, 60° F	and up to and in	ncluding 50° F ,, 55° F ,, 60° F	90 ,, 60 ,, 30 ,, 15 ,,

Official reporting of category C milk to W. A. E. C.'s and farmers will not be made when the mean atmospheric shade temperature for the 24 hours following production is above 65°F.

INTERPRETATION OF RESULTS:

Milk will be graded as follows:

Disc reading after prescribed period of incubation	Category	Keeping quality
4 and over	A	Satisfactory
3½ to 1 (both inclusive)	В	Doubtful
½ or 0	C	Unsatisfactory

#### Appendix1

Standards for Resazurin and Resazurin Tablets

Resazurin powder and resazurin tablets must be from an approved source. A list of approved sources can be obtained from the National Institute for Research in Dairying, Shinfield near Reading.

All resazurin and resazurin tablets used in the scheme must bear a label showing the following particulars:

<sup>1.</sup> See p. 215 supra.

(i) Name of manufacturer.

(ii) The words "this batch of resazurin powder (cr tablets) has been tested and approved by the National Institute for Research in Dairying on behalf of the Ministry of Agriculture".

#### RESAZURIN:

The following standards have been provisionally adopted from the commercial product known as "resazurin":

- (i) It must contain sodium resazurate equivalent to 60+3 per cent free resazurin.
- (ii) No other dyestuff (apart from traces of sodium resazurate) shall be present.
- (iii) The residue shall consist only of sodium corbonate and/or sodium acetate and moisture.
- (iv) It must give a colourless water-clear solution on reduction in alkaline solution.
- (v) It must give, at a concentration of 1 in 222,000 in fresh normal mixed Shorthorn milk of 3.4 per cent fat, a tintometer disc reading of not less than 6.
- (vi) The material must behave similarly to standard preparations maintained at the National Institute for Research in Dairying.

#### RESAZURIN TABLETS:

Tablets, when dissolved according to instructions shall give a 0.005 per cent +0.005 per cent solution of resazurin having the above properties. Tablets must not contain any substance other than resazurin, lactose and or sodium chloride and the 0.005 per cent solution prepared from the tablet must not give a plate count on Yeastrel agar at 37° C (Memo 139/Foods, Ministry of Health, London) of more than 10 colonies per ml. Three plates are poured and the mean count taken.

- (6) Biological Test for tubercle bacilli. There are no official instructions for carrying out this test. Briefly, it consists in injecting into each of two guinea-pigs, 1.5 ml. of the deposit obtained from centrifuging 100 ml. of the sample of milk. The guinea-pigs are kept for a period of six weeks, being examined at weekly intervals. If, during this period, there is any clinical evidence of tuberculosis, the animal is killed and a post-mortem examination carried on. If not, the first guinea-pig is killed at the end of six weeks and a detailed post-mortem examination carried out. If there is no evidence of tuberculosis the remaining guinea-pig is kept for a further two weeks, when it is killed and examined.<sup>1</sup>
- (7) Sediment Test. This is not a laboratory test. It is used in the field to demonstrate to farmers and farm workers visible dirt in milk. The test is carried out by pumping a quantity of milk through a filter disc, the visible dirt being retained on the filter disc and can be demonstrated to the farmer and his staff. The two chief types of sediment tester are the "mint", manufactured by Sutherland Thomson & Co., and the "Tustman" manufactured by Llewellins & James, Ltd. It must be emphasised that this test is merely a method of demonstrating the presence of visible dirt in milk. It is in no sense a bacteriological test. It may, however, be of considerable use to the sanitary officer when engaged on advisory work on the farm, as a means of supplementing the official test, previously referred to, which are not always easily understood by farmers.

<sup>1.</sup> For further details of this test, see "Milk Production and Control," Harvey and Hill

#### APPENDIX D

### PREVENTION OF FOOD ADULTERATION RULES

S. R. O. 2106.—In exercise of the powers conferred by sub-section (2) of Sec. 4 and sub-section (1) of Sec. 23 of the Prevention of Food Adulteration Act, 1954 (37 of 1954), the Central Government, after consultation with the Central Committee for Food Standards hereby makes the following Rules, the same having been previously published as required by sub-section (1) of Sec. 23 of the said Act, namely:

#### RULES

#### PART I-PRELIMINARY

- 1. Short title, extent and commencement. (1) These Rules may be called the Prevention of Food Adulteration Rules, 1955.
- (2) They extend to the whole of India except the State of Jammu and Kashmir.
- (3) These Rules, other than those contained in Part III Appendix 'B'—item A. 12, Margarine, Part VI and Part VII shall come into force on the date of their publication in the official Gazette and the Rules contained in Part III—Appendix 'B'—item A. 12, Margarine, Part VI and Part VII shall come into force <sup>1</sup>[on the first day of December, 1956.]
  - 2. Definitions. In these Rules, unless, the context otherwise requires-
    - (a) "Act" means the Prevention of Food Adulteration Act, 1954 (37 of 1954).
    - (b) "Director" means the Director of the Laboratory.(c) "Laboratory" means the Central Food Laboratory.
    - (d) "Form" means a Form set forth in Appendix A to these Rules.

#### PART II--THE CENTRAL FOOD LABORATORY

- 3. Functions. In addition to the functions entrusted to the Laboratory by the Act, the Laboratory shall carry out the following functions, namely:
  - (a) analysis of samples of food sent by any offi er or authority authorized by the Central Government for the purpose and submission of the certificate of analysis to the authorities concerned;
  - (b) investigations for the purpose of fixation of stundards of any article of food;
  - (c) investigations in collaboration with the laboratories of Public Analysts in the various States for the purpose of standardizing methods of analysis.
- 4. Analysis of food samples. (1) Samples of food for analysis whether under sub-section (2) of Sec. 13 of the Act or under clause (a) of rule 3 shall be sent either through a messenger or by registered post in a sealed packet, enclosed, together with a memorandum in Form I in an outer cover addressed to the Director.
- (2) The container as well as the outer covering of the packet shall be marked with a distinguishing number.
- (3) A copy of the me norandum and a specimen impression of the seal used to seal the container and the cover shall be sent separately by registered post to the Director.
- 1. The words and figures "on the 1st day of December, 1956" were substituted for the words and figures "on the 1st day
- of October, 1956" by Notification No. S. R. O. 2213, dated 28th September, 1956.

- (4) On receipt of the packet, it shall be opened either by the Director or by an officer authorized in writing in that behalf by the Director, who shall record the condition of the seal on the container.
- (5) After test or analysis, the certificate thereof shall be supplied forthwith to the sender in Form II.
- (6) The fees payable in respect of such certificates shall be <sup>1</sup>[Rs. 40 per sample of food analysed.]
- (7) Certificate issued under these Rules by the Laboratory shall be signed by the Director.

# PART III—DEFINITION; AND STANDARDS OF QUALITY

5. Standards of quality of the various articles of food specified in Appendix B to these Rules are as dfiened in that Appendix.

# PART IV—PUBLIC ANALYSTS AND FOOD INSPECTORS

- 6. Qualification of Public Analysts. A person shall not be qualified for appointment as Public Analyst unless he -
- (i) is a graduate with chemistry as one of the subjects, of a University recognized for this purpose by the State Government and has had not less than five years' post-graduate experience in the analysis of food in a laboratory under the control of—
  - (a) a Public Analyst appointed under the Act, or
  - (b) a Chemical Examiner to Government, or
  - (c) a Fellow of the Royal Institute of Chemistry of Great Britain (Branch E), or
  - (d) the head of an institution specially approved for the purpose by the State Government; or
- (ii) is an M. Sc. in chemistry, or holds a research degree on the subject, of an University recognized for this purpose by the State Government, and has had not less than two years' post-graduate experience in the analysis of articles of food under the control of—
  - (a) a Public Analyst appointed under the Act, or
  - (b) a Chemical Examiner to Government, or
  - (e) a Fellow of the Royal Institute of Chemistry of Great Britain (Branch E), or
  - (d) the head of an institution specially apported for the purpose by the State Government; or
- (iii) is a graduate in medicine of a University recognized for the purpose by the State Government with a post-graduate qualification in Public Health and with experience in food analysis for at least five years; or

(iv) is a Fellow of the Royal Institute of Chemistry of Great Britain (Br nch E) with at least one year's experience of food analysis in India:

Provided that for a period of four years from the commencement of the Act, persons whose qualifications, training and experience are regarded by the State Government as affording, subject to such further training, if any, as may be considered necessary, a reasonable guarantee of adequate knowledge and competence may be appointed as Public Analysts.

7. Duties of Public Analyst. (1) on receipt of a package containing a sample for analysis from Food Inspector or any other person the Public

<sup>1.</sup> Substituted for "according to the rates specified by the Central Government" by

Notification No. S. R. O. 2755, dated 20th November, 1956.

Analyst or an officer authorized by him shall compare the scalen the comainer and the outer cover with specimen impression received separately and shall note the condition of the scale thereon.

- (2) The Public Analyst shall cause to be analysed such samples of food as may be sent to him by the Food Inspector or by any other person under the Act.
- (3) After the analysis has been completed he shall for the supply to the person concerned a report in Form III of the result of such analysis.
- 8. Qualifications of a Food Inspector. A person shall not be qualified for appointment as Food Inspector unless he—
  - (i) is a medical officer in charge of the health administration of a local area, or
  - (ii) is a graduate in medicine, or a licentiate in medicine, or
  - (iii) is a holder of qualification in sanitary science registrable as an additional qualification by the State Medical Council, or Health Officers Examination Certificate, or possesses qualifications prescribed by the respective State Governments for appointment of sanitary inspectors or health inspectors:

Provided that for a period of four years from the date on which the Act takes effect, persons whose qualifications, training and experience are regarded by the State Government as affording, subject to each further training, if any, as may be considered necessary, a reasonable guarantee of adequate knowledge and competence may be appointed as food inspectors.

- 9. Duties of Food Inspector. It shall be the duty of the Food Inspector—
  - (a) to inspect as frequently as may be prescribed by the Food (Health) Authority or the local authority all establishments licensed for the manufacture, storage or sale of an article of food within the area assigned to him;
  - (b) to satisfy himself that the condition of the licences are being observed;
  - (c) to procure and send for analysis, if necessary, samples of any article of food which he has reason to suspect are being manufactured stocked or sold or exhibited for sale in contravention of the provisions of the Act or rules framed thereunder;
  - (d) to investigate any complaint which may be made to him in writing in respect of any contravention of the provisions of the Act, or rules framed thereunder;
  - (e) to maintain a record of all inspections made and action taken by him in the performance of his duties, including the taking of samples and the seizure of stocks, and to submit copies of such record to the Health Officer or the Food (Health) Authority as directed in this behalf;
  - (f) to make such enquires and inspections as may be necessary to direct the manufacture, storage or sale of article of food in contravention of the Act or rules framed thereunder;
  - (g) to stop any vehicle suspected to contain any food intended for sale or delivery for human consumption;
  - (h) when so authorized by the Health Offi ers having jurisdiction in the local area concerned or the Food (Health) Authority, to

detain imported packages which he has reason to suspect contain food, the import or sale of which is prohibited; and

(i) to perform such other duties as may be entrusted to him by the Health Officer having jurisdiction in the local area concerned or

the Food (Health) Authority.

- 10. Form of order not to dispose of stock. Where the Food Inspector decides to keep under sub-sec. (4) of Sec. 10 of the Act in the safe custody of the vendor any stock of food which appears to him to be adulterated or misbranded, he shall after scaling the stock make an order to the vendor to that effect in Form IV, and the vendor shall comply with such order.
- 11. Form of receipt for food seized by a Food Inspector. For every article of food seized and carried away by a Food Inspector under subsec. (4) of Sec. 10 of the Act, a receipt in Form V shall be given by the Food Inspector to the person from whom the article was seized.
- 12. Form of intimation of purpose of taking sample. Where a Food Inspector takes a sample of an article of food for the purpose of analysis, he shall intimate such pupose in writing in Form VI to the person from whom he takes the sample.
- <sup>1</sup>[12-A.] Warranty. Every trader selling an article of food to a vendor shall, if the vendor so requires deliver to the vendor a warranty in Form VI-A:

Provided that no warranty in such form shall be necessary if a label on the article of food or the cash memo delivered by the trader to the vendor in respect of that article contains a warranty certifying that the food contained in the package or container or mentioned in the cash memo is the same in nature, substance and quality as demanded by the vendor.

Explanation. The term 'trader': shall mean an importer, manufacturer or wholesale dealer or an authorized agent of such importer, manufacturer or wholesale dealer.

13. Power of Food Inspector to deal with carriers of disease handling food. (1) Where the Food Inspector is of the opinion that any person engaged in selling or manufacturing any article of food is suffering from or harbouring the germs of any infectious disease, he may examine or cause to be examined such person:

Provided that where such person is a female above the age of eight years she shall be examined by a woman duly authorized by the Food Inspector.

(2) If on such examination the Food Inspector finds that such person is suffering from any such disease, he may by order in writing direct such person not to take part in selling or manufacturing any article of food.

PART V-SEALING, FASTENING AND DESPATCH OF SAMPLES

- 14. Manner of sending samples for analysis. Samples of food for the purpose of analysis shall be taken in clean dry bottles or jar or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, entrance of moisture, and shall be carefully sealed.
- 15. Bottles or containers to be labelled and addressed. All bottles or jars or other containers containing samples for analysis shall be properly labilled and the purcels shall be properly addressed. The label on any sample of food sent for analysis shall bear—

(a) Serial No.

(b) Name of the sender with official d signation, if any.

<sup>1.</sup> Added by Notification No. S.R.O. 2755, dated the 20th November, 1956.

- (e) Name of the vendor.
- (d) Date and place of collection.
- (e) Nature of article submitted for analys's.
- (f) Nature and quantity of preservative, if any, added to the sample.
- 16. Manner of packing and sealing the samples. All samples of food sent for analysis shall be packed, fastened and sealed in the following manner, namely:
  - (a) The stopper shall first be securely fastened so as to prevent leakage of the contents in transit.
  - (b) The bottle, jar or other container shall then be completely wrapped in fairly strong thick paper. The ends of the paper shall be neatly folded in and affixed by means of gum or other adhesive.
  - (c) The paper cover shall be further secured by means of strong twine or thread both above and across the bottle, jar or other container, and the twine or thread shall then be fastened on the paper cover by means of sealing wax on which there shall be at least four distinct and clear impressions of the scal of the sender, of which one shall be at the top of the packet, one at the bottom and the other two on the body of the packet. The knots of the twine or thread shall be covered by means of scaling wax bearing the impression of the seal of the sender.
- 17. Containers of samples how to be sent to the Public Analyst. The container of sample for analysis shall be sent to the Public Analyst by registered post or railway parcel or air freight, or by hand in a sealed packet, enclosed together with a memorandum in Form VII in an outer cover addressed to the Public Analyst.
- 18. Memorandum and impression of seal to be sent separately by post. A copy of the memorandum and a specimen impression of the seal used to seal the packet shall be sent to the Public Analyst separately by post.
- 19. Addition of preservatives to samples. Any person taking a sample of any food for the purpose of analysis under the Act may add a preservative as may be prescribed from time to time to the sample for the purpose of maintaining it in a condition suitable for analysis.
- 20. Preservative in respect of milk, cream and gur. The preservative used in the case of samples of any milk (including skimmed and separated milk), cream and gur in liquid or semi-liquid form shall be the liquid commonly known as "formalin" that is to say, a liquid containing about 40 per cent of formaldehyde in aqueous solution, in the proportion of one drop for one ounce of the sample.
- 21. Nature and quantity of the preservative to be noted on the label. Whenever any preservative is added to a sample, the nature and quantity of the preservative added shall be clearly noted on the label to be affixed to the container.
- 22. Quantity of sample to be sent to the Public Analyst. The quantity of sample of food to be sent to the Public Analyst/Director for analysis shall be as specified below:

Articles	of food		Approximate quantito be supplied	ty
			oz.	
(1)	Milk	 	8	
12.	(ih: v	 	4	
(3)	Butter	 	4	
(-1)	Khoa	 	4	
(5)	Dahi	 	8	
(6)	Edible oils	 	4	
(7)	Edible fats	 	4	
(8)	Tea	 	4	
(8)	Atta	 	8	
(10)	Wheat flour	 	8	
(11)	Gur	 (# · ·	8	
(12)	Cane sugar	 	8	
	Honey	 	4	
	Prepared food	 * * *	16	
	Aerated water	 	12	
<sup>1</sup> [(16)	Vanaspati]	 	16	

# PART VI-COLOURING MATTER

- 23. Unauthorized addition of colouring matter pohibited. The addition of a colouring matter to any article of food except as specifically permitted by these Rules, is prohibited.
- 24. Extraneous addition of colouring matter to be mentioned on the label. Where an extraneous colorring matter has been added to any article of food there shall be written on the label attached to any package of food so coloured a statement in capital letters as below:

# ARTIFICIALLY COLOURED

Provided that this rule shall not apply to cheese (all classes), ice-cream, mixed ice-cream, icing sugar and gelatine desserts.

25. Use of caramel permitted. Notwithstanding provisions of rule 24

caramel may be used without label declaration.

<sup>2</sup>[26. Natural colouring matters which may be used. The following natural colouring principles whether isolated from natural colours or produced synthetically may be used in or upon any article of food:

- (a) Cochineal or Carmine.
- (b) Carotin and Carotenoids.
- (c) Chlorophyll.
- (d) Lactoflavin.
- (e) Caramel.
- (f) Annatte.
- (g) Ratanjot.
- (h) Saffron.
- (i) Curcumin.]

<sup>1.</sup> Added by Notification No. S. R. O. 2. Ibid. 2755, dated 20th November, 1956.

27. Addition of inorganic matters and pigments prohibited. Inorganic colouring matters and pigments shall not be added to any article of food.

<sup>1</sup>[28. Coaltar dyes which may be used. No coaltar dyes or mixtures thereof except the following shall be used in foods.

	Colour	Common name	Colour Index	Chemical Clas.
1.	Red	Ponceau 4R	185	Azo
		Carmoisine	179	Azo
		Red 6 B	57	Azo
		Red FB	225	Azo
		Acid Magenta II	692	Triphenylmethane.
		Fast Red E	182	Azo
2.	Yellow	Tattrazine	640	Pyrazolone.
		*Sunset Yellow FCF		Azo
3.	Blue	Blue VRS	672	Triphenylmethane.
		Indigo Carmine	1180	Indigoid.
4.	Black	Brilliant Black BN	****	Bisazo

\*F. D. &. C. No. 6.1

- <sup>2</sup>[29. Use of permitted coaltar dyes prohibited. Use of permitted coaltar dyes in or upon any food other than those enumerated below is prohibited:
  - (a) Ice-cream including mixed ice-cream.
  - (b) Dairy products except milk, dahi, butter, ghee, chhana, condensed milk, cream and baby foods.
  - (c) Smoked fish.
  - (d) Egg preparations.
  - (e) Biscuit, pastery, confectionery and sweets.
  - (f) Fruit products.
  - (g) Non-alcoholic beverages except tea, cocoa and coffee.
  - (h) Custard powder.
  - (i) Jelly crystals.
  - (j) Soup powder.
  - (k) Luncheon or Pork Luncheon meat.]
- <sup>3</sup>[30. Maximum limit of permitted colours. The maximum limit of permitted coaltar colours or mixture of permitted coaltar colours which may be added to any food shall not exceed 1.5 grains per pound of the final food or beverage for consumption.]
- 31. Colours to be pure. The colours specified in rule 28 when used in the preparation of any article of food shall be pure and free from any harmful impurities.
- <sup>4</sup>[32. Contents of the label. Unless otherwise provided in these rules there shall be specified on every label:
  - (a) the name, trade name or description of food contained in the package;
  - (b) the name and business address of the manufacturer or importer or vendor or packer;

Substituted by notification No. S. R. O. 3. Ibid. 2755, dated 20th November, 1956.
 Ibid. 4. Ibid.

<sup>2.</sup> Ibid.

- (c) where any permitted class II preservative and/or colouring agent is added, a statement to the effect that it contains permitted class II preservatives and/or permitted colouring agents;
- (d) the net weight or number or measure or volume of contents as the circumstances may require except in the case of biscuits, confectionery and sweets where the weight may be expressed in terms of either average net weight and/or minimum net weight;
- (e) a batch number or code number either in Hindi or Engl.sh numericals or alphabets or in combination:

Provided that in the case of food package weighing not more than 2 ounces, particulars including in the statement under any clause need not be specified:

Provided further that in the case of-

- (a) aerated water containers; and
- (b) a package containing more than 2 ounces but not more than 4 ounces of biscuits, confectionery and sweets,

particulars under clauses (d) and (e) need not be specified.

Explanation. The term 'label' means a display of written, printed, perforated, stencilled, embossed or stamped matter upon the container of any food package.]

<sup>1</sup>[33. Languages of the particulars or declaration of the label. The particulars or declaration required under these rules to be specified on the label shall be in English or Hindi in Devanagri script:

Provided that nothing herein contained shall prevent the use of any other language in addition to the language required under this rule.]

- 34. Declaration to be surrounded by line. There shall be a surrounding line enclosing the declaration and where the words "unfit for babies" are required to be used there shall be another such line enclosing these words.
- 35. Distance of surrounding line. The distance between any part of the words "unfit for babies" and the surrounding line enclosing these words shall not be less than one-sixteenth of an inch.
- 36. Size of the types used for declaration. The type used for the declaration shall not, in any part be less than one-eighth of an inch in height:

Provided that where the size of the package does not permit use of a type of one-eighth of an inch, letters of proportionately reduced size may be used:

Provided further that the type used for the words "unfit for babies" shall not be less than twice the height of any part of the declaration.

37. Labels not to contain false or misleading statements. A label shall not contain any statement, claim, design, device, fancy name or abbreviation which is false or misleading in any particular concerning the food contained in the package, or concerning the quantity or the nutritive value or in relation to the place of origin of the said food:

<sup>2</sup>[Provided that this rule shall not apply in respect of established trade or fancy names of confectionery, biscuits and sweets, such as Barley Sugar, Bulls Eye, Cream Cracker, or in respect of aerated waters such

<sup>1.</sup> Substituted by notification No. S. R. O. 2. Ibid. 2755, dated 20th November, 1956.

as Ginger Beer or Gold Spot or any other name in existence in international

trade practice.]

38. Labels not to contain reference to Act or Rules contradictory to required particulars. The label shall not contain any reference to the Act or any of these Rules or any comment on, or reference to, or explanation of any particulars or declaration required by the Act or any of these Rules to be included in the label which directly or by implication contradicts, qualifies, or modifies such particulars or declaration.

39. Labels not to use words implying recommendation by medical profession. There shall not appear in the label of any package containing food for sale the words "recommended by the medical profession" or any words which imply or suggest that the food is recommended, prescribed

or approved by medical practitioners.

40. Unauthorized use of words showing imitation prohibited. <sup>1</sup>[(1) There shall not be written in the statement or label attached to any package containing a y article of food the word "initation" or any word, or words implying that the article is a substitute for any food, unless the use of the said word or words is specifically premitted under these rules.

(2) Any beverage which does not contain at least ten percentum of fruit juice by weight in its composition shall not be described as a fruit syrup, juice, squash or cordial or crush and shall be described as a synthetic syrup. Every synthetic syrup shall be clearly and conspicuously marked on the label as a "Synthetic" product, and no container containing such product shall have a label, whether attached thereto or printed on the wrapper of such container, or otherwise, which may lead the consumer into believing that it is a fruit product. Neither the word "Fruit" shall be used in describing such a product nor shall it be sold under the cover of a label which carries picture of any fruit.

Aerated water containing no finit juice or pulp shall not have a label

which leads the consumer into believing that it is a fruit product.]

41. Imitations not to be marked pure. The word "pure" or any word or words of the same significance shall not be included in the label of

a package that contains an imitation of any food.

42. Form of labels: 'A) Coffee-chicory mixture. (i) Every package containing a mixture of coffee and chicory shall have affixed to it a label upon which shall be printed the following declaration:

# COFFEE BLENDED WITH CHICORY

This mixture contains

Coffee

per cent

Chicory

per cent

<sup>2</sup>[(ii) \* \* \* \* \*]

(B) Condensed milk or desiccated (dried) milk. (i) Every package containing condensed milk or desiccated (dried) milk shall bear a label upon which is printed such one of the following declarations as may be applicable

dated 20th November, 1956.

<sup>1.</sup> Rule 40 re-numbered as sub-rule (1) thereof and after sub-rule (1) as so re-numbered sub-rule (2) inserted by Notification No. S. R. O. 2755,

Sub-rules (ii) and iil omitted by Notification No. S.R.O. 2755, dated 20th November, 1956.

or such other declaration substantially to the like effect as may be allowed by the State Government.

(a) In the case of condensed full cream milk (unsweetened):

# CONDENSED FULL CREAM MILK

Unsweetened

This tin contains the equivalent of (x).....pints of milk

(b) In the case of condensed full cream milk (sweetened):

# CONDENSED FULL CREAM MILK

SWEETENED

This tin contains the equivalent of (x)... pints of milk, with sugar added.

(c) In the case of condensed skimmed milk (unsweetened):

# CONDENSED MACHINE-SKIMMED MILK or CONDENSED SKIMMED MILK

Unsweetened

UNFIT FOR BABIES

This tin contains the equivalent of (x).....pints of milk

(d) In the case of condensed skimmed milk (sweetened):

CONDENSED MACHINE-SKIMMED MILK
or
CONDENSED SKIMMED MILK

SWEETENED

UNFIT FOR BABIES

This tin contains the equivalent of (x).....pints of milk with sugar added.

(e) In the case of desiccated (dried) full cream milk:

#### DRIED FULL CREAM MILK

This tin contains the equivalent of (x).....pints of milk.

(f) In the case of desiccated (dried) partly skimmed milk:

# DESICCATED (DRIED) PARTLY SKIMMED MILK

# SHOULD NOT BE USED FOR BABIES EXCEPT UNDER MEDICAL ADVICE

This tin contains the equivalent of (x).....pints of  ${}^{1}[*]$  milk.

(g) In the case of desiccated (dried) skimmed milk:

# DESICCATED (DRIED) SKIMMED MILK

# UNFIT FOR BABIES

This tin contains the equivalent of (x).....pints of skimmed milk

(ii) The declaration shall in each case be completed by inserting at (x) the appropriate number in words and in figures, for example, "one and half (1½)", any fraction being expressed as eighth, quarters or a half as the case may be. For the purpose of deciding the equivalent of pints of milk or skimmed milk under these rules, 'milk' means milk which contains not less than 12·4 per cent of total milk solids (including not less than 3·6 per cent of milk fat) and 'skimmed milk' means milk which contains not less than 9 per cent of milk solids other than milk fat.

(iii) There shall not be placed on any package containing condensed milk or desiccated (dried) milk any comment on, explanation of, or reference to either the statement of equivalence, contained in the prescribed declaration or on the words "machine skimmed", "skimmed" or "unfit for babies" except instructions as to dilution as follows:

"To make a fluid not below the composition of fresh milk or skimmed milk or 2[\*\*] (as the case may be) with the contents of this package, add (here insert the number of parts) of water by volume to one part by volume of this condensed (dried) milk."

<sup>1.</sup> The word "cream" omit. by notification No. 2755, dated 20th November, 1956.

- (iv) Wherever the word "milk" appears on the label of a package of condersed skimmed milk or of desiccated (dried) skimmed milk as the description or part of the description of the contents, it shall be immediately preceded or followed by the word "machine skimmed" or skimmed or "partly skimmed" as the case may be.
- (C) Ice-cream. Every dealer in ice-cream or mixed ice-cream who, in the street or other place of public resort, sells or offers or exposes for sale, ice-cream or ice-candy from a stall or from a cart, barrow or other vehicle, or from a basket, phial, tray or other container used without a staff or a vehicle, shall have his name and address along with the name and address of the manufacturer, if any, legibly and conspicuously displayed on the stall, vehicle or container, as the case may be.
- 43. Notice of addition, admixture or deficiency in food. (1) Every advertisement and every price or trade list or label for an article of food which contains an addition, admixture or deficiency shall describe the food as containing such addition, admixture or deficiency and shall also specify the nature and quantity of such addition, admixture or deficiency. No such advertisement or price or trade list or label attached to the container of the food shall contain any words which might imply that the food is pure.
- (2) Every package, containing a food which is not pure by reason of any addition, admixture or deficiency shall be labelled with an adhesive label, which shall have the following declaration—

# DECLARATION

This (a).....contains an admixture/addition of not more than (b)......per cent of international weight of (c)..... per ounce

(a) Here insert the name of food.

(b) Here insert the quantity of admixture which may be present.

(c) Here insert the name of the admixture or the name of the ingredient which is deficient.

Where the context demands it, the words 'contains an admixture of' shall be replaced by the words 'contains an addition of' or 'is deficient in'.

- (3) Unless the vendor of a food containing an addition, admixture or deficiency, has reason to believe that the purchaser is able to read and understand the declaratory label, he shall give the purchaser, if asked, the information contained in the declaratory label by word of mouth at the time of sale.
- (4) Nothing contained in this rule shall be deemed to authorise any person to sell any article of food required under the Act or these rules to be sold in pure condition, otherwise than in its pure condition.

<sup>2</sup>[(5) Nothing contained in this rule shall apply in case of sweets, confectionery, biscuits, bakery products, processed fruits, aerated water and vegetables.]

PART VIII—PROHIBITION AND REGULATION OF SALES

- 44. Sale of certain admixtures prohibited. Notwithstanding the provisions of rule 43 no person shall either by himself or by any servant or agent sell—
  - (a) cream which has not been prepared from milk or which eontains less than <sup>3</sup>[23 per cent] of milk fat,

Substituted by Notification No. 2755,
 Inserted by ibid.
 Substituted by ibid.
 Substituted by ibid.

(b) milk which contains any added water,

(c) ghee which contains any added matter not exclusively derived from milk fat,

(d) skimmed milk (fat abstracted) as milk,

(e) a mixture of two or more edible oils as an edible oil,

(f) vanaspati to which ghee has been added,

<sup>1</sup>[(g) any article of food which contains artificial sweetner except saccharin or in the preparation of which any such artificial sweetener has been used,]

(h) turmeric containing any foreign substance,

- <sup>2</sup>[(i) mixture of coffee and any other subststance except chicory.]
- 45 Food resembling but not pure honey not to be marked honey. No person shall use the word honey or any word, mark, illustration or device that suggests honey on the label or any package of, or in any advertisement for, any food that resembles honey but is not pure honey.
- 46. Sale or use for sale of admixtures of ghee or butter prohibited. No person shall sell or have in his possession for the purpose of sale or for use as an ingredient in the preparation of an artic's of food for sale a mixture of ghee or butter and any substance (a) prepared in imitation of or as a substitute for ghee or butter, or (b) consisting of or containing any oil or fat which does not conform to the definition of ghee:

Provided where a mixture prohibited by this rule is required for the preparation of an article of food, such mixture shall be made only at the time of the preparation of such article of food.

<sup>3</sup>[47. Addition of saccharin to be mentioned on the label. Saccharin may be added to any food if the container of such food is labelled with an adhesive declaratory label, which shall be in the form given below:

66This.....(name of food) contains an admixture of succharin.]

48. Use of flesh of naturally dead animals or fowls prohibited. No person shall sell or use as an ingredient in the preparation of any article of food intended for sale, the flesh of any animal or fowl which has died on account of natural causes.

<sup>4</sup>[48-A. Sale of permitted food colours. (i) No person shall sell coaltar dyes, or their mixtures or any preparation of such colours for use in

or upon food, except under a licence;

(ii) No person shall sell a permitted coaltar dye for use in or upon food unless is container carries a label stating the following particulars;

(a) the words "Food Colours",

(b) the chemical and the common or commercial name of the dyestuff.

(iii) No person shall sell a mixture of permitted coaltar dyes for use in or upon food unless its container carries a label stating the following particulars:

(a) the words "Food Colour Mixture",

- (b) the chemical and the common or commercial name of the dyestuffs contained in the mixture.
- (iv) No person shall sell a preparation of permitted coaltar dyes for use in or upon food unless its container carries a label stating the following particulars:

(a) the words "Food Colour Preparation",

(b) the name of the various ingredients used in the preparation.

Substituted by Notification No. 2755, 3. Substituted by ibid. dated 20th November, 1956.
 Inserted by ibid.

# PART IX—CONDITIONS FOR SALE AND LICENCE

- 49. Conditions for sale. (1) Every utensil or container used for manufacturing, preparing or containing any food or ingredient of food intended for sale shall be kept at all tim's in good order and repair and in a clean and sanitary condition. No such utensil or container shall be used for any other purpose.
- (2) No person shall use for manufacturing, preparing or storing any food or ingredient of food intended for sale, any utensil or container which is imperfectly enamelled or imperfectly tinned or which is made of such materials or is in such a state as to be likely to injure such food or render it noxious.
- (3) Every utensil or container containing any food or ing edient of food intended for sale shall at all time be either provided with a tight-fitting cover or kept closed or covered by a properly fitting lid or by a clos -fitting cover or gauze, net or other material of a texture sufficiently fine to protect the food completely from dust, dirt and flies and other insects.
- (4) No utensil or container used for the manufacture or preparation of, or containing any food or ingredient of food intended for sale shall be kept in any place in which such utensil or container is likely by reason of impure air or dust or any offensive, noxious or deleterious gas or substance or any noxious or injurious emanations, exhalation, no effluvium, to be contaminated and thereby render the food noxious.
- (5) A utensil or container made of the following materials or metals, when us d in the preparation of food shall be deemed to render it unfit for human consumption:

(i) containers which are rusty;

(ii) enamelled containers which have become chipped and rusty;

(iii) copper or brass containers which are not properly tinned; and (iv) containers made of aluminium containing an admixture of lead.

<sup>1</sup>[Provided that utensils or containers made of copper or brass which are not properly tinned may be us d in preparation of sugar or confectionery and mere u e of such utensils or containers shall not be deemed to render sugar or confectionery unfit for human consumption.]

- 50. Conditions for licence. (1) No person shall manufacture, sell, stock, distribute or exhibit for sale any of the following articles of food except under a licence:
  - (a) milk or skimmed milk or separated milk,
  - (b) milk products, including khoa, cream, rabri, dahi, etc.
  - (c) ghee,
  - (d) butter,
  - charbi,
  - (f) edible oils,
  - (9) 2 \* \* ],
  - (h) sweetmeats and savoury,
  - aerated water.
  - (j) articles made out of flour including biscuits and other bakery

Notification No. 2755, 2. Omitted by ibid. 1. Added by dated 20th November, 1956.

- (k) any other article of food <sup>1</sup>[except fruit products covered under the Fruit Products Order, 1955, and the vegetable oil products or vanaspati, manufactured, stocked, sold or distributed by factories licensed for the purpose] which the State Government by notification specify.
- (2) The State Government or the local authority shall appoint licensing authorities.
- (3) A licensing authority may with the approval of the State Government or the local authority by an order in writing delegate the power to sign licences and such other powers as may be specified in the order to any other person under his control.
- (4) If articles of food are manufactured, stored or exhibited for sale at more than one place, separate application shall be made, and a separate licence shall be issued, in respect of each such place:

Provided that this shall not apply to itinerant vendors who have no specified place of business and who will be licensed to conduct business in a particular area within the jurisdiction of the licensing authority.

- (5) Before graning a licence for manufacture, stock or exhibition of any of the articles of food in respect of which a licence is required, the licensing authority shall inspect the premises and satisfy itself that it is free from sanitary defects. The applicant for the licence shall have to make such alteration in the premises as may be required by the licensing authority for the grant of a licence.
  - (6) <sup>2</sup>[ \* \* \*
- (7) Proprietors of hotels and restaurants who sell or expose for sale savourites, sweets or other articles of food shall put up a notice-board containing separate lists of the articles which have been cooked in ghee, edible oil, hydrogenated vegetable oils and other fats for the intending purchasers.
- (8) Oils which are declared as not intended for human consumption or have been denatured, shall not be manufactured, stored or sold in the same premises where edible oils are manufactured, stored or sold.
- (9) No licensee shall employ in his work any person who is suffering from infectious, contagious or loathsome disease.
- (10) No person shall manufacture, store or expose for sale or permit the sale of any article of food in any premises not effectively separated to the satisfaction of the licensing authority from any privy, uninal, sullage, drain or place or storage of foul and waste-matter.
- (11) All vessels used for the storage or manufacture of the articles intended for sale shall have proper covers to avoid contamination.
- (12) Every manufacturer (including ghanni operator) or wholesale dealer in butter, ghee, hydrogenated vegetable oils, edible oils, and other fats shall maintain a register showing the quantity manufactured, received or sold and the destination of each consignment of the substances sent out from his maunfactory or place of business, and shall present such register for inspection whenever required to do so by the licensing authority.
- (13) An itinerant vendor granted a licence under these rules shall carry a metallic badge showing clearly the licence number and the nature of the article for the sale of which the licence has been granted.
  - (14) The nature or articles of food for the sale of which a licence is

Substitute I by notification No. 2755, dated 2. Omitted by ibid, 20th November, 1956.

required under these rules shall be mentioned in the application for licence. Any objectionable, ambiguous or misleading trade name shall not be approved by the licensing authority.

(15) Every licensee who sells any food, shall display a notice-board containing the nature of the articles which he is exposing or offering for sale.

51. Duration of licence. A licence shall, unless sooner suspended or cancelled, be in force for such period as the State Government may prescribe:

Provided that if application for a fresh licence is made before the expiry of the period of validity of the licence, the licence shall continue to be in force until orders are passed on the application.

### PART X-PRESERVATIVE

- 52. Definition of Preservative. Preservative means a substance which when added to food, is capable of inhibiting, retarding or arresting the process of fermentation, acidification or other decomposition of food.
- 53. Classification of Preservative. Preservative shall be divided into following classes:
  - (i) Class I Preservative shall be-

(a) Common salt.

(b) Sugar,

(c) Dextrose, (d) Glucose,

(e) Wood smoke,

(f) Spices,

(g) Vinegar or acetic acid,

(h) Honey, (i) Hops,

(i) Commercial saltpetre, and
(k) Alcohol or potable spirits.

Addition of Class I Preservatives in any food in any proportion is not restricted.

(ii) Class II Preservatives shall be-

(a) Benzoic acid including salts thereof,

(b) Sulphurous acid including salt thereof, and

- (c) Nitrites of sodium or potassium in respect of food like ham, pickled meat.
- 54. Use of more than one Class II Preservative prohibited. No person shall use in or upon a food more than one Class II Preservative.
- 55. Use of Class II Preservative restricted. The use of Class II Preservatives shall be restricted to the following group of foods in concentration not exceeding the proportion given below against each:

	Article of food.	Preservative.	Parts per million.
	(1)	(2)	(3)
1.	Sausages and sausage meat containing raw meat, cereals and condiments.	Sulphur dioxide	450

2. Fruit, fruit pulp or juice (not dried) for conversion into jam or crystallised glace or cured fruit or other products—

	Article of food.			Drosouseties	. D	
	antificite of 100d.			Preservative		arts per million.
	(1)			(2)		(3)
	(a) Cherries			Sulphur dioxic	le	3,000
	(b) Strawberries and			V .		2,000
	(c) Other fruits			Do		1,000
	Fruit juice concentrate			Do		
4.	Dried fruits.					-,000
	(a) Apricots, peaches,	apples, pea	rs and			
	other fruits.	7,700,700		Do		2,000
	(b) Raisins and sultar	nas	•••	Do		750
5.	Other non-alcoholic wine		fruit	Do		350
	juices and beverages swe					
	sweetened.			or		
				Benzoic acid		600
6.	Jam, marmalade, preserve,	canned ch	erry	Sulphur dioxi	ide	40
	and fruit jelly.			or		
7	C	1 6 /: 1	1.	Benzoic acid		200
7.	Crystallised glace or cured	fuit (inclu	ding	Sulphur dioxi	de	150
8.	Fruit and fuit pulp not oth	ierwise spec	ified	***		
^	in this schedule.			Do		350
9.	Sugar, glucose, gur and kh			Do	* * 4	70
10.	Corn flour and such like st	arches	• • •	Do		100
11. 12.	Corn syrup		• • •	Do		450
13.	Gelatine			Do		350
14.	Beer Cider		* * *	D.		70
15.	A 1 1 11 1		* * *	D.	0 0 0	200 450
16.	Sweetened mineral water		• • •	Do	• •	70
10.	Sweetened Immerat water	• • •	• •	or	• •	10
				Benzoic acid		120
87.	Brewed ginger beer	0 0 0		Do		120
	Coffee extract			Do		450
19.	Pickles and chutney made	from fruit	t or			
	vegetables.			Do		250
20.	Tomato and other sauces					750
21.	Cooked pickled meat included bacon.	luding ham	and	Sodium		
				or		
			Pot	assium nitrite.	Note	more
						200
						P. M.
						lated as
					sodium	nitrite).
22.	Danish tinned caviar			nzoic acid	000	50
23.	Dehydrated vegetables			phur dioxide		2,000
24.	Tomato puree and paste			nzoic acid		250
25.	Syrups and sharbas	• • • • • • • • • • • • • • • • • • • •		phur dioxide	or	020
				nzoic acid		600
26.	Dried ginger		. Su	phur dioxide		2,000
		1. 1. 1		- menconstatis	20 000	4 4 9

56. Container of food which contains preservative not to be marked "Pure". The word "Pure" shall not be used on the label of the container of food which contains preservative.

- 2. The following shall be added in Appendix 'B';
- A. 05.07. Black Pepper or Pepper Corn means the sound fruit of piper migrum having the characteristic appearance and shall conform to the following standards:
  - (a) Deteriorated fruits and any extraneous matter shall not exceed 3 per cent,
  - (b) Light berries shall not exceed 5 per cent,
  - (c) Total non-volatile ether extract shall be not less than 7 per cent,
  - (d) Total starch content shall be not less than 30 per cent.
  - (e) Total ash content shall not exceed 8 per cent, and
  - (f) Ash insoluble in HCl shall not exceed 1. 5 per cent.

A. 05.08. Ginger means the washed and dried or the decorticated and dried rhizom of zingiber officinale and shall be free from damage from insect pests. Sulphur dioxide may be used as a preservative. It shall conform to the following analytical standards:

- (a) Alcohol (90 per cent) soluble extract ... Not less than 4.5 per cent.
- (b) Ash ... Not more than 7.0 per cent.
- (c) Water soluble ash... ... Not less than 1.7 per cent.
- (d) Cold water soluble extract ... Not less than 10.0 per cent.

A. 05.09. Cardamon. "Lesser Cardamom" or Chota Ilaychi means the dried nearly ripe fruit of Electtaria cardamomum. It shall not contain more than 5 per cent of damaged seed or extraneous matter and shall be free from sand, earth, dirt and admixture by substituted seeds. It shall contain not less than 3.5 per cent of volatile oil. The total ash content shall not exceed 8 per cent. of ash insoluble in hydrocholoric acid 3 per cent.

"Greater Cardamom". Bara Ilaychi shall be the dried, nearly ripe fruit of the various species of the genus Ammomum and shall contain not less than 1.0 per cent of volatile essential oils. The total ash content shall not exceed 8 per cent and ash insoluble in hydrochloric acid 3 per cent.

A. 05.10. Chillies (Capsicum) means the dried, ripe fruits of the genus (Capsicum) and may contain brownish yellow flat seeds and shall be free from sand, earth or dirt. It shall be free from infestation, extraneous colouring matter, oil and other foreign substances or substitutes. It shall contain—

(a) not more than 3.0 per cent of calces and pedicles.
(b) not more than 1.0 per cent foreign organic matter.
(c) not more than 8.0 per cent total ash.

(d) not more than 1.25 per cent ash insoluble in hydrochloric acid.

(e) not more than 30 per cent crude fibre.

(f) not less than 12 per cent non-volatile ether extract.

A.05. 11. Aniseed or Soanf is the dried, ripe fruit of Pemeinella anisum. It shall have the characteristic appearance and shall be free from sand, earth, dirt and admixture by substituted seeds. It shall not

(a) more than 5 per cent of foreign seeds or matter:

(b) more than 9 per cent of total ash;

- (c) more than 1.5 per cent of ash insoluble in hydrocholoric acid: and
- (d) less than, 2 per cent volatile oil.

A.05.12. Fennel fruit (or seers) or Sowa means the dried, ripe fruit of cultivated plants of Foeniculum vulgare. The fruit shall be sound and free from sand, earth, or other dirt and shall not contain—

(a) more than 4 per cent of foreign organic matter seeds or stalks;

(b) more than 9 per cent of total ash;

- (c) more than 2 per cent of ash insoluble in hydrochloric acid; and
- (d) less than 4 per cent of volatile oil.
- A.05.13. Fenugreek (Methi) is the dried ripe seeds of Trigonella foenumgraecum. It shall not contain more than 5 per cent damaged seeds of extraneous matter and shall be free from dust, dirt, extraneous weed seeds, of smell and insects. It shall not contain—

(a) more than 10 per cent of moisture;

(b) more than 5 per cent of foreign organic matter;

(c) more than 7 per cent of total ash;

- (d) more than 2 per cent of ash insoluble in hydrochloric acid; and
- (e) less than 30 per cent of water soluble extract.
- A.05.14. Nutmeg (Jaiphal) means the dried seed (kernel) of the fruit of Myristica fragrans. It shall be sound and free from infestation and conform to the following specifications:

(a) not more than 5 per cent of total ash;

- (b) not more than 0.5 per cent of ash insoluble in hydrochloric acid;
- (c) not less than 25 per cent of non-volatile ether extract; and

(d) not more than 10 per cent crude fibre.

- A. 05.15. Mace (Jaitree) means the dried outer coat or arillus of the fruit, Myristica fragrans and shall not contain the arillus of any other variety of Myristica including M. Malabarica or Fatua (Bombay mace) and M. Argentes (wild mace). It shall not contain—
  - (a) more than 5 per cent of the deteriorated article or extraneous or foreign organic matter;

(b) more than 3 per cent of total ash;

(c) more than 10 per cent of crude fibre; and

- (d) less than 20 per cent and not more than 30 per cent of non-volatile ether extract.
- A.07.05. Gur or jaggery means the product obtained by boiling or processing juice pressed out of sugarcane or extracted from palmyra palm, date palm, or coconut palm. It shall be free from substances deleterious to health and shall conform to the following analytical standards on dry weight basis:
  - (i) total sugars not less than 90 per cent and sucrose not less than 70 per cent.

(ii) extraneous matter insoluble in water not more than 2 per

cent.

(iii) total ash not more than 6 per cent.(iv) ash insoluble in hydrochloric acid.(HCl) not more than 0.5 per cent.

Gur or jaggery other than that of the liquid or semi liquid variety shall not contain more than 10 per cent moisture.

- A.11.14. Ghee means the pure clarified fat derived solely from milk or from curds or from cream to which no colouring matter or preservative has been added. It shall conform to the following specifications in Punjab, Uttar Pradesh, Bhopal, Vindhya Pradesh, Bihar, West Bengal (except Bishnupur) and PEPSU (except Mahendragarh):
  - (a) Butyro-refractometer reading at 40° C.—40.0 to 43.0.

(b) Reichert value—not less than 28.0.

(e) Free fatty acids as oleic acid—not more than 3 per cent

(d) moisture—not more than 0.3 per cent.

In Madras, Andhra, Travancore-Cochin, Hyderabad, Mysore, Orissa, Assam, Tripura, Manipur, Madhya Bharat, Bombay, Himachal Pradesh, Mahendragarh District of PEPSU, Madhya Pradesh (except cotton-tract areas) and Rajasthan (except Jodhpur) the specifications will be the same as above except the Reichert value shall be not less than 26.0.

In Saurashtra, Kutch, cotton-tract areas of Madhya Pradesh, Jodhpur Division of Rajasthan and Bishnupur Sub-Division of West Bengal the Reichert value shall be not less than 21 and the Butyro-refractometer reading at 40° C. shall be between 41.5 to 45.0. The limits of free fatty acids and moisture shall be the same for ghee in Punjab, PEPSU, etc. given above.

Explanation. By cotton tract is meant the areas in Madhya Pradesh where cotton seed is extensively fed to the cattle.

- A.16. Fruit Products. A.16.01. Fruit jusice means unfermented and unconcentrated liquid expressed from sound, ripe fresh fruit, and with or without—
  - (a) sugar, dextrose, invert sugar, or liquid glucose, either singly or in combination.
  - (b) water, peel oil, fruit essences and flavour common salt, ascorbic acid, citric acid and permitted colours and preservative.

The acidity of the finished product calculated as citric acid shall not be less than 4 per cent in the case of pure lemon juice or pulp and not less than 5 per cent in the case of pure juice but shall not exceed 3.5 per cent in the case of other juices.

A.16.02. Tomato juice means canned or bottled, unconcentrated pasteurized juice expressed from tomato with a proportion of the pulp expressed with or without the application of heat by any method that does not add water to such juice, from whole, ripe tomatoes from which all stems and objectionable portions have been removed and with or without—

(*a*) salt,

(b) sugar, or dextrose, or both added in dry form,

(c) citric acid, malic acid or ascorbic acid,

(d) permitted colours.

The total soluble solids W/W shall be not less than 65 per cent.

A. 16.03. Fruit syrup means sweetened fruit juice containing sugar, dextrose, invert sugar or liquid glucose either singly or in combination, and with or without.

(a) water, peel oil, fruit essences and flavours, common salt,

(b) citric acid, ascorbic acid,

(c) permitted preservative and colours.

The total soluble solids W/W shall be not less than 65 per cent.

- A.16.04. Fruit squash means the expressed juice of the sound ripe fruit with the pulp, containing sugar dextrose, invert sugar or liquid glucose either singly or in combination and with or without—
  - (a) water, peel oil, fruit essences and flavour, common salt,
  - (b) citric acid, ascorbic acid,
  - (c) permitted preservative and colours.

The total soluble solids  $W_iW$  in the finished product shall be not less than 40 per cent.

- A.16.05. Fruit beverage or fruit drink means any beverage or drink which is purported to be prepared from fruit juice and water, or carbonated water, and containing sugar, dextrose, invert sugar or liquid glucose either singly or in combination and with or without—
  - (a) water, peel oil, fruit essences and flavours,
  - (b) citric acid, ascorbic acid,
  - (c) permitted preservative and colours.

Total soluble solids W/W in the final product shall be not less than 10 per cent.

- A.16.06. Tomato sauce, tomato ketchup, tomato relish or any other expression conveying the meaning that the product so designated is a form of a tomato sauce, shall be a preparation of sound and ripe tomatoes with or without—
  - (a) sugar, salt, vinegar, acetic acid, onions, spices or condiments,
  - (b) citric acid, ascorbic acid,
  - (c) premitted preservative and colours.

Total acidity in terms of acetic acid shall be not less rhan 1.2 per cent and the total soluble solids W/W not less than 25 per cent. It shall not contain any other vegetable substance.

- A.16.07. Jam means the product obtained by processing fresh fruit, canned fruit, dried fruit or fruit pulp, with water, sugar dextrose, invert sugar or liquid glucose either singly or in combination by boiling to a suitable consistency and with or without—
  - (a) citric acid, malic, ascorbic acid,
  - (b) premitted preservative and colours.
  - (c) pectin in the form of fruit juice or pulp.

The minimum soluble solids W/W shall be 60 per cent. Jam shall not contain—

- (a) less that 45 per cent of fruit except where fruit is strawberry or raspberry when it shall contain not less than 25 per cent,
- (b) sweetening agent other than specified above,
- (c) apple or rhubarb, but it may contain in any amount that reasonably compensates for any deficiency in the natural acidity or pectin content of the fruit used in its preparation,
- (d) tartaric acid, or
- (e) extraneous pectin, agar or gelatin.

A. 16:08. Jam with added pectin means the product obtained by processing fresh fruit, canned fruit, dried fruit or fruit pulp, with water, sugar,

dextrose, invert sugar or liquid glucese, either singly or in condition, by loiling to a suitable consistency and with or without—

(a) (i) citric, malic, ascorbic acid,

(ii) lemon or lime juice,

(iii) cider vinegar,

(b) pectin or pectinous preparation,(c) permitted preservative and colours.

It shall not contain less than 27 per cent of the named fruit except where such fruit is strawberry or raspberry when it shall contain 10t less than 15 per cent.

Total solub'e solids W/W shall not be less than 60 per cent. The product shall be labell d as "Jam with added pectin."

A. 16:09. Marmalade means the product made from any combination of peel, pulp, and juice of the named cirus fruit by beiling with water, sugar, dextrose, invert sugar or liquid glucose either singly or in combination to a suitable con i tency and with or without an acid ingredient in an amount that reasonably compensates for any deficiency in the natural acidity of the fruit used in its preparation, consisting of—

(a) citric, malic, tartaric, or ascorbic acid,

(b) lemon or lime juice,

(c) cider vinager.

It may contain permitted preservative and colours.

It shall not contain less than 45 per cent of the named fruit.

Total soluble solids W/W shall be not less than 60 per cent.

A. 16:10. Marmalade with added pectin means the poduce made from any combination of peel, pulp and juice of the named citrus fruit by boiling with water, sugar, dextrose, invert sugar or liquid glucose either singly or in combination to a suitable consistency with or without—

(a) (i) citric, malic, tartaric, ascorbic acid,

(ii) lemon or lime juice,

(b) pectin or pectinous preparatton,(c) permitted preservative and colours.

It shall not contain less than 27 per cent of the named fruit.

Total soluble solids W/W shall not be less than 60 per cent.

The product should be labelled as "Marmalade with added pec in".

- A. 16:11. Fruit chutney means a preparation made from sound fruits and vegetables with spices, salt, onion, garlic, sugar, jaggery, vinegar or acetic acid, and shall contain not less than 50 per cent of total soluble solids W/W and permitted preservative.
- A. 16:12. Sauce shall be the product derived from any suitable kind and variety of fruit and vegetable which are wholesome and which shall be practically free f om insect or fungal attack or blemish affecting the quality of the fruit or vegetable. The only substances that may be added are fruit, vegetable, their pulp, juice, dried fruit, sugar, spices, salt, vinegar, acetic acid, citric acid malic acid, onion, garlic, flavouring material and permitted preservetive and colours.
- A. 17. Edible oils. A. 17.01. Coconut oil (Naryal-ka-tel) means the oil expressed from copra obtained from the kernel of Cocos Nucifera nuts. It shall be clear and free from rancidity, suspended or other foreign matter, characted water, add d colouring or flavouring substances, or mineral oil. It shall conform to the following standards:

- (a) Butyro-refractometer reading at 40° C.—34.0 to 35.5.
- (b) Saponification value—250 to 260.
- (c) Iodine value 7.5 to 10.0.
- (d) Polenske value—not less than 13.0.
- (e) Free fatty acid as oleic acid—not more than 3.0 per cent.

A. 17:02. Cotton seed oil (Binola-ka-tel) means the oil expressed from clean, sound and decorticated enton seeds (Genus Go sypium) refined and dehyerated. It shall be clear, free from rancidity, suspended or other freign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards:

- (a) Butyro-refractometer-57.9 to 60.2.
- (b) Saponification value—190 to 198.
- (c) Iodine value-105 to 112.
- (d) Unsaponifiable matter—not more than 1.5 per cent.
- (e) Free fatty acid as oleic acid—not more than 1.0 per cent.

A. 17:03. Groundhut oil (moongh-phali-ka-tel) means the oil expressed from clean and sound groundhuts (Arachis Hypogoes). It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards:

- (a) Butyro-refractometer reading at 40° C-54.0 to 57.1.
- (b) Saponification value—188 to 196.
- (c) Icdine value—85 to 99.
- (d) Unsaponifiable matter—not more than 1.0 per cent.
- (e) Free fatty acid as oleic aicd—not more than 3.0 per cent.
- (f) Bellier test (turbidity temperature)—39° C to 41° C.

A. 17:04. Line ed oil Tisi-ka-tel means the oil obtained by process of expressing clean and ound lineed (Linum Usitatissimum). It shall be clear, free from ran idity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards:

- (a) Butyro-refractometer reading at 40°C-69.5 to 74.3.
- (b) Saponification value-188 to 195.
- (c) Iodine value—not less than 170.
- (d) Unsaponifiable matter—not more than 1.5 per cent.

A. 17.05. Mahua oil means the oil expressed from clean and sound seeds or nuts of Madhuca (Bassia latifolia or B. longifolia or a mixture of both). It shall be clear and shall be free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards:

- (a) Butyro-refractometer reading of 40°C—49.5 to 52.7.
- (b) Saponification value—187 to 196.
- (c) Iodine value—58 to 70.
- (d) Unsaponifiable matter—not more than 2.0 per cent.
- (e) Free fasty acid as oleic acid—not more than 20.0 per cent.

- A. 17:06. Mustard oil (Sarson-ka-tel) means the oil expressed from clean and sound mustard seeds, belonging to the competris, juncea or napus varieties of Brassica. It shall be clear, free from rancidity, suspended, or foreign matter, separated water, added colouring or flavouring substances or mineral oil. It shall conform to the following standards:
  - (a) Butyro-refractometer reading at 40°C—58.0 to 60.5.
  - (b) Saponification value—168 to 176.
  - (c) Iodine value—96 to 108.
  - (d) Unsaponifiable matter—not more than 1.2 per cent.
  - (e) Free fatty acid as oleic acid—not more than 3.0 per cent.

The test for argemone oil should be negative.

- A. 17.07. Olive oil means the oil expressed from the ripe olive fruit (Olea europea). It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances or mineral oil. It shall conform to the following standards:
  - (a) Butyro-refractometer reading at 40°C—53.0 to 56.0.
  - (b) Saponification value—185 to 196.
  - (c) Iodine value—79 to 90.
  - (d) Unsaponifiable matter—not more than 1.0 per cent.
  - (e) Free fatty acid as oleic acid—not more than 3.0 per cent.
- A. 17.08. Poppy seed oil means the oil expressed from poppy seeds (Papaver somniferum). It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards:
  - (a) Butyro-refractometer reading at 40°C—60.0 to 64.0.
  - (b) Saponification value—186 to 194.
  - (c) Iodine value—133 to 143.
  - (d) Unsaponifiable matter—not more than 1.0 per cent,
  - (e) Free fatty acid as oleic acid—not more than 3.0 per cent.
- A. 17.09. Safflower oil (barrey-ka-tel) means the oil expressed from the seeds of Carthamus tinctorius. It sha'l be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring susbstances, or mineral oil. It shall conform to the following standards:
  - (a) Butyro-refractometer reading at 40°C—62.4 to 64.7.
  - (b) Saponification value—186 to 196.
  - (c) Iodine value—135 to 146.
  - (d) Unsaponifiable matter—not more than 1.0 per cent.
  - (e) Free fatty acid as oleic acid—not more than 3.0 per cent.
- A. 17.10. Teramira oil means the oil expressed from clean and sound seeds of Taramira (Eruca sativa). It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring susbstances, or mineral oil. It shall conform to the following standards:
  - (a) Butyro-refractometer reading at 40°C—58.0 to 60.0.
  - (b) Saponification value—174 to 177.

- (c) Iodine value—90 to 105i
- (d) Unsaponifiable matter—not more than 1.0 per cent.
- (e) Free fatty acid as oleic acid—not more than 3.0 per cent.
- A. 17.11. Til oil (gingelly or sesame oil) means the oil expressed from clean and sound seeds of Til (Sesamum Indicum) black, brown, white, or mixed. It shall be clear, free from cancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards:
  - (a) Butyro-refractometer reading at 40°C—58.0 to 61.0.
  - (b) Saponification value—188 to 193.
  - (c) Iodine value—108 to 115.
  - (d) Unsaponifiable matter—not more than 1.5 per cent.
  - (e) Free fatty acid as oleic acid—not more than 3.0 per cent.
- A. 17:12. Niger seed oil (Sargiya-ka-tel) means the edible oil obtained by process of expressing clean and sound seeds of Guizoti abyssinica. It shall be clear and free from rancidi y, suspended or other foreign matter, separated water, added colouring or flavouring substances, mineral, or other oil. It shall conform to the following standards:
  - (a) Butyro-refractometer reading at 40°C-61.0 to 65.0.
  - (b) Saponification value—188 to 193.
  - (c) Iodine value—125 to 135.
  - (d) Unsaponifiable matter—not more than 1.0 per cent.
  - (e) Free fatty acids as oleic acid—not more than 3.0 per cent.
  - (f) Bellier test (turbidity temperature) -25°C to 26°C.

### A. 18. Cereals .-

A. 18:01.—Atta means the coarse product obtained by milling or grinding wheat sieving it. It shall contain not more than 2.5 per cent. of ash and not less then 7 per cent of gluten both calculated on dry weight basis. It shall be free from grit and the alcoholic acidity (with 90 per cent. alcohol) shall not exceed 0.1 per cent expressed as sulphuric acid (H<sub>2</sub>So<sub>4</sub>).

A. 18:02. Mai la means the fine product made by milling or grinding wheat and bolting or dressing the resulting wheat mea!. It shall contain not more than I per cent of ash and not less than 8:0 per cent of gluten both calculated on dry weight basis. The alcoholic ac dity (with 90 per cent alcohol) shall not excee 10:1 per cent express d as sulp'unic acid H2So4).

A. 18.03. Semolina (Suji) is the food prepared from wheat by the process of grinding and bolting to such a degree of finenes that it passes through a No. 20 sieve and not more than 3 per cent. passes through a No. 100 sieve. It shall be free from grit and in eet infe tation, musty smell and off-odour and should be creamy yellow in colour.

### It shall contain—

- (a) not more than 1 per cent of total ash;
- (b) not more than 13.5 per cent of moisture;
- (c) not less than 6.0 per cent of gluten.
- A. 19. Vegetable Oil Product or Vanaspati means any refined edible vegetable oil or oils, subjected to a process of hydrogenation in any form. It shall be prepar d by hydrogenation from groundnut oil, cotton seed oil and

sesame oil or mixtures thereof or any other harmless vegetable oils allowed by the Government for the purpose. It shall conform to the standards specified below:

- (i) It shall not contain any harmful colouring, flavouring or any other matter deleterious to health.
- (ii) No colour shall be added to hydrogenated vegetable oil unless so authorized by Government, but in no event any colour resembling the colour of ghee shall be added.
- (iii) If any flavour is used, it shall be distinct from that of ghee, in accordance with a list of permissible flavours and in such quantities as may be prescribed by Government.
- (iv) It shall not have moisture exceeding 0.25 per cent.
- (v) The melting point as determined by the capillary slip method shall be from 33°C to 37°C both inclusive.
- (vi) The Butyro-refractometer reading at 40°C shall not be less than 48.
- (vii) It shall not have unsaponifiable matter exceeding 1.25 per cent.
- (viii) It shall not have free fatty acids (calculated as oleic acid) exceeding 0.25 per cent.
  - (ix) The product on melting shall be clear in appearance and shall be free from staleness or rancidity, and pleasant to taste and smell.
  - (x) It shall contain raw or refined seasame (til) not less than 6 per cent by weight, but sufficient so that when the vegetable oil product is mixed with refined groundnut oil in the proportion of 20:80, the red colour produced by the Bausouin test shall not be lighter than 2.0 Red units in 1 cm. cell on a lovibond scale.
- (xi) It shall contain not less than 700 I. U. of synthetic Vitamin 'A' per ounce.
- Vinegar means a liquid derived from alcoholic and acetous fermentation of any suitable medium such as fruits, malt, molasses, sugarcane juice, etc.

Vinegar shall conform to the following standards:

- (1) It shall contain at least 3.75 grammes of acetic acid per 100 ml.
- (2) It shall contain at least 1.5 per cent. W/W of total solids and 0.18 per cent of ash.
- (3) It shall not contain (i) sulphuric acid or any other mineral acids, (ii) lead or copper, (iii) arsenic in amounts exceeding 1.5 per million, and (iv) any foreign substance or colouring matter except caramel.
- (4) Malt vinegar, in addition, shall have at least 0.05 per cent of phosphorous pentoxide (P2O5), and 0.04 per cent. of nitrogen. Brewed vinegar shall not be fortified with acetic acid, synthetic vinegar shall be distinctly labelled as "synthetic" and shall state on label "prepared from acetic acid".
- A. 21. Catechu (edible) shall be the dried aqueous extract prepared from the heart-wood of Acacia Catechu. It shall be free from infestation, sand, earth or other dirt and shall conform to the following standards:

(a) 5 ml, of 17 per cent aqueous solution, and 0.1 per cent solution of ferric ammonium sulphate shall give a dark green colour which on the addition of sodium hydroxide solution shall change to purple.

(b) When dried to constant weight at 100°C, it shall not lose more

than 12 per cent by weight.

(c) Water insoluble residue (dried at 100°C shall not be more than 25 per cent by weight.

(d) Alcohol insoluble residue in 90 per cent, alcohol dried at 100°C.

not more than 30 per cent by weight.

- (c) Total ash on dry basis not more than 8 per cent by weight. (f) Ash insoluble in HCl not more than 0.5 per cent on dry weight
- Gelatin shall be the purified air-dried product obtained by A. 22. extraction with hot water of certain tissues such as, skin, ligaments and bones of slaughtered healthy animals. It shall be colourless, transparent, odourless, in brittle sheets or in vitreous shreds, shall be free from objectionable taste and odour and from pathogenic bacteria and shall not contain any added colour, dyes of the inorganic group or coaltar dyes; shall not contain poisonous metals above the permissible limit; shall be completely soluble in acetic and insoluble in 90 per cent alcohol and ether; shall dissolve in water (1 in 50) and solidify to a jelly on cooling.

It shall not contain-

(a) more than 15 per cent moisture;

(b) more than 3.25 per cent of total ash;

(c) more than 3.50 parts per million of sulphur dioxide. (d) less than 15 per cent of nitorgen on dry weight basis.

Gelatin meant for human consumption should be labelled as "Edible Gelatin."

Mustard seed means the dried, ripe seed of Brassica Nigra. A. 23. Brassica Juncea and other allied cultivated varieties of the species belonging to the natural order Cruciferac and to the genus Sinapis or Brassica. The common species are black or brown mustard (B. nigra), Brown or screpta mustard (B. besseriana), white or yellow mu tard (B. alba) and Indian mustard (B. juncea).

It shall not contain—

(a) more than 5 per cent of foreign organic matter, and deteriorated or other seeds, and shall be free from insect pests. It shall be free from argemone seeds;

(b) more than 5 per cent of total ash;

(6) more than 1.5 per cent of ash insoluble in hydrochloric acid,

(d) less than 0.6 per cent of volatile essential oil.

A. 24. Poppy seed is the dried, ripe seed from the fruit of the Opium Poppy, Papaver Somniferum. The seeds may be white or greyish in colour.

It shall not contain—

(a) more than 5 per cent by weight, of other harmless foreign seeds, dust or other foreign or vegetable matter;

(b) more than 8 per cent of total ash;

(c) less than 40 per cent. of oil,

# APPENDIX E

# Form I

[See rule 4 (1)]

1	Memorandum to the Director, Central Food Labo	oratory
From		
To		
The Direct Central	food Laboratory,	
7. 9		
No.	Dated the	19
	MEMORANDUM	
for test or analy	rewith, under the provisions of Sec. 13 ration Act, 1954, sample (s) of a food pursis and request that a report on the result d to this Court:	rporting to be
(I) Dist	inguishing No. on the container and outer	covering
(2) Part	diamila of CC 11 1	
	tter on which opinion required	
A fee of R	Rs has been deposited in Court.	
		gistrate, 1st Class/
	Pres	sidency Magistrate.
	Form II	
	[See rule 4 (5) ]	
Cert	ificate of test or analysis by the Central Food 1	T abt
Certified the	hat the sample (s), bearing No.	Lavoratory
purporting to be	e a sample/samples of ———————	
	1	
uattu	nas/have been tested/	analysed and that the
resurt/resurts of s	deri tests (s) allalysis is/alle stated below:	
P 6 6		
2. The on receipt was a	condition of the seals on the container and	d the outer covering
• • • • •		
	0	
	Central Food I	Director,
Place	Central Food La	woratory
Date		
If opinion is r	required on any other matter, suitable paragraph(s)	
I. Substituted 1	by Notification N. 2755	may be added.
	by Notification No. 2755, dated 20th November, 1	956.

# Form III

[See rule 7 (3)]
Report by the Public Analyst

	Report No
	he Prevention of Food Adulteration y of
and am of the opinion that	
Signed thisday	
Address	(Signature) Public Analyst.
Form I'	10]
Whereas (here give the name of article of for food which is in your possession apbranded.	food)intented pears to me to be adulterated/ mis-
Now therefore under sub-section (4) Adulteration Act, 1954 (37 of 1954), I he custody the said sealed stock subject to suquently in relation thereto.	reby direct you to keep in your safe
Place————	Food Inspector,
Date —————	Area
Form	$\mathbf{v}$
[See rule	[1]
me under the provisions of sub-section (4) Adulteration Act, 1954 (37 of 1954), from	ed below has this day been seized by of Sec. 10 of the Prevention of Food the premises of
Details of article of	food seized
	Food Inspector,
Date	Area

# Form VI

[See rule 19]

I have this day taken from the premises of			
cified below to h	ave the same analysed	by the D. L.	
		by the rubh	
	Food Inspector,		
	Area		
the fit had been a second or the second of the second or t	-		
<sup>1</sup> [Form V	I-A		
[See rule 12	-A1		
Form of War	rantv		
_			
	Place		
	Date	•••••••	
The second section of the second			
		D	
are or quality of ar	ticle Quantity	Price	
(2)	Quantity (3)		
	~	Price (4)	
(2)	(3)	(4)	
(2)	(3)	(4)	
(2)	(3)	(4)	
(2)	ds mentioned in this tance and quality as the	invoice is/ar	
(2)	(3)	invoice is/ar	
(2)	ds mentioned in this tance and quality as the	invoice is/ar	
(2)	ds mentioned in this tance and quality as the Signature of trader	invoice is/ar	
tify that food/foode in nature, subst	ds mentioned in this tance and quality as the Signature of trader	invoice is/ar	
tify that food/foode in nature, subst	ds mentioned in this tance and quality as the Signature of trader  VII  17]	invoice is/ar	
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tify that food/foode in nature, subst	ds mentioned in this tance and quality as the Signature of trader  VII  17]	invoice is/ar	
tify that food/foode in nature, subst	ds mentioned in this tance and quality as the Signature of trader  VII  17]	invoice is/ar	
(2)  tify that food/foode in nature, substitute in food/foode in food/fo	ds mentioned in this tance and quality as the Signature of trader  VII  17]	invoice is/ar hat demanded	
	en from the premis situated at  Details of f  [See rule 12  Form of War	Details of food.  Food Insperance  1 [Form VI-A  [See rule 12-A]  Form of Warranty  Place  Date	

tion No. S. R. O. 2755, dated 20th November, 1956.

#### MEMORANDUM

The sample described below is sent herewith for analysis under clause (b) of sub-section (1) of Sec. 10 and/or clause (c) (ii) of sub-section (1) of Sec. 11 of the Prevention of Food Adulteration Act, 1954.

- (1) Serial No. of the sample.
- (2) Name of the vendor.
- (3) Date and place of collection.
- (4) Nature of article submitted for analysis.
- (5) Nature and quantity of preservative, if any, added to the sample.
- 2. A copy of this memo and a specimen impression of the scal used to seal the packet of sample is being sent separately by <sup>1</sup>[\*] post/by hand.<sup>2</sup>

Food Inspector,
Area....

<sup>1.</sup> Word "registered" omitted by S. R. O. 2. Strike out whichever is not applicable. 2755, dated 20th November, 1956.

### APPENDIX F

[See rule 5]

# DEFINITION AND STANDARDS OF QUALITY

A. 01. Beverages—Non-Alcoholic.—

A. 01.01. Aerated water, other than soda water, means potable water sweetened with sugar impregnated with corbon dioxide or oxygen or with both, under pressure, with or without admixture of salts of sodium, magnesium or calcium, singly or in combination with or without citric acid and of the permitted flavouring and colouring substance, if any, and shall not contain tataric acid or phosphoric acid or other mineral acid or any lead or other poisonous metal, or any other added substance.

Aerated water shall be deemed to be below the standard of purity if it is manufactured from water which is unfit for drinking purposes or if ice manufactured from such water is inserted in it.

A. 01:02. Soda water shall be potable water impregnated with carbon dioxide or oxygen or with both, under pressure with or without admixture of salts of sodium, magnesium or calcium, singly or in combination, and shall not contain any lead or other poisonous metal or any other added substance.

Soda water shall be deemed to be below the standard of purity if it is manufactured from water which is unfit for drinking purposes or if ice manufactured from such water is inserted in it.

A 02. Baking powder means a combination capable, under conditions of baking, of yielding dioxide, and consists of sodium bicarbonate, and acid-reacting material, starch or other neutral material.

The acid-reacting of baking powder shall be-

- (a) tataric acid or its salts, or both,
- (b) acid salts of phosphoric acid,
- (c) acid compounds of aluminium, or
- (d) any combination of the foregoing.

When tested, baking powder shall yield not less then 10 per cent of its weight of carbon dioxide.

A. 03. Starchy food.—

<sup>1</sup>[A. 03·01. Arrowroot means the separated and purified starch from the rhizomes of the plant known as Maranta arund inacea or from curcuma angustifolia].

A. 03.02. Tapioca globules known as Tapioca sago or Sabudana means the edible starchy product of the roots of the Tapioca plants (Manihot utilissima) and shall be free from lime, tale or any other non-starchy foreign ingredients.

<sup>2</sup>[A. 04. Asafoetida or hing means the oleo-gum-resin obtained from the rhizome and root of Ferula alliacea, Ferula rubricaulis and other species of Ferula. It shall contain no sand, gravel or other foreign mineral matter, colophony resin, galbonum resin, ammoniaccum resin or any other foreign

Substituted by Notification No. S. R. O.
 2755, dated 20th November, 1956.

resin. The ash content shall not exceed 15 per cent of its weight; and the alcoholic extract (with 90 per cent. alcohol) shall be not less than 25 per cent.

Compounded asafoetida or Bandhani hing is composed of one or more varieties of asafoetida (Irani and/or Pathani hing gum arabic and wheat and or rice flour. It shall not contain sand, gravel or other foreign mineral matter, colophony resin galbonum resin, ammoniaccum resin or any other foreign resin. The ash content shall not exceed 10 per cent, of its weight and the alcoholic extract (with 90 per cent, alcohol) shall not be less than 10 per cent. Use of colatar dyes or mineral pigment is prohibited.]

- A. 05:01. Turmeric (haldi) means the died rhizome or bulbous root of plants of genus curcuma and species longa and includes turmeric in whatsoever form. It shall be free from damage by insect, from lead chromate and other artificial colouring matter, and shall not contain more than 2:5 parts per million of lead. It shall conform to the following standards:
  - (a) Moisture shall not be more than 10 per cent.
  - (b) The characteristic boric acid test shall be positive.
  - (c) Total ash shall be not more than 7 per cent.
  - (d) Ash insoluble in HCl shall not exceed 1.5 per cent.
  - A. 05.02. Cumin seed (Cuminum cyminum) shall notcontain—
    - (a) more than 5 per cent of foreign seeds,
    - (b) more than 9.5 per cent of total ash, and
    - (c) more than 1.5 per cent of ash insoluble in HCl.
  - A. 05:03. Caraway (Carum carvi) seeds shall not contain—
    - (a) more than 5 per cent of foreign seeds,
    - (b) more than 8 per cent of total ash, and
    - (c) more than 1.5 per cent of ash insoluble in HCl.
- A. 05.04. Cinnamon means the dried inner bark of Cinnamonum zeylanicum. Powdered cinnamon shali not contain any cassia nor any other foreign vegetable substance. It shall contain not more than eight per cent of total ash and not more than 2 per cent of ash insoluble in hydrochloric acid and shall contain not less than 0.5 per cent of volatile essential oil.
- A. 05.05. Cloves means the dried flower-buds of Eugenia Carpophyllata. They shall not contain any exhausted, partly-exhausted cloves, nor any foreign vegetable or mineral substance nor more than 5 per cent by weight of clove stems. It shall contain not less than 15 per cent of volatile ether extract, not more than 7 per cent of total ash and not more than 0.5 per cent of ash insoluble in HCl.
- A. 05.06. Coriander is the dried fruit of the coriander plant, and shall not contain more than 7 per cent. of total ash, and 1.5 per cent. of ash insoluble in hydrochloric acid.
- A. 06. Bean means dry kidney-shaped or flattened seeds of the leguminous varieties used as food, either whole or prepared as dall. It shall not contain hydrocyanic acid exceeding 20 parts per million as determined by A. O. A. C. Maceration method.

# A. 07. Sweetening agents-

A. 07.01. Cane sugar is the crystallized sugar obtained from sugarcane, beet root, etc., and includes the refined product obtained from gur.

It shall contain not more than 0.7 per cent. of ash, not more than 1.5 per cent. of water and not less than 96.5 per cent. sucrose.

- A. 07.02. Bura shall contain not less than 96.5 per cent. of total sugar expressed as sucrose and should contain not more than half per cent. of its weight as insoluble ash. It should be free from all poisonous matter. In the case of khandasari the minimum sugar content in term of sucrose should be not less than 90 per cent.
- A. 07.03. Honey means the food derived entirely from the work of bees operating upon the nectar of flowers and other sweet exudation of plants. It shall not contain more than (a) 25 per cent. of moisture, (b) 0.5 per cent. of ash, and (c) 10 per cent. of sucrose. The minimum reducing sugar content shall be 60 per cent. Fiehe's test should be negative.
- A. 07.04. Ice-candy means the frozen ice produce containing sugar, with or without the addition of the permitted colouring or flavouring substances.

# A. 08. Coffee-

- A. 08.02. (1) Coffee (green, raw or unroasted) means the seed of coffee arabica, coffee liberica or coffee robusta; freed from all but a small portion of its spermoderm by decortication.
- (2) Roasted coffee means properly cleaned green coffee which has been roasted to a brown colour and has developed its characteristic aroma.
- (3) Ground coffee means the powdered product obtained from 'roasted coffee' only and shall be free from husk.
- (4) Coffee (green, raw or unroasted), roasted coffee and ground coffee shall be free from any artificial colouring, flavouring, facing, extraneous matter or glazing substances and shall be in sound, dry and fresh condition free from rancid or obnoxions flavour.
- (5) Coffee (green, raw or unroasted), roasted coffee and ground coffee shall conform to the following analytical standards:
  - (i) Total ash (determied on the sample dried to constant weight at 100°C) shall be feathery white or bluish white in colour and shall be not less than 3.5 per cent. and not more than 5.0 per cent. by weight of which not less than 65 per cent. shall be soluble in boiling distilled water. The ash insoluble in hot dilute HCl shall be not more than 0.1 per cent.
  - (ii) The alkalinity of the ash per gram of dried coffee shall be equivalent to not less than 3.4 ml. and not more than 4.4 ml. of N/10 acid.
  - (iii) The caffeine content, as obtained by standard methods shall be not less than 1.2 per cent.
  - (iv) The aqueous extract (determined by extraction of 2 grams of the sample dried to constant weight at 100° G with 100 ml. of boiling distilled water for one hour under reflux) shall be not less than 25 per cent, and not more than 32 per cent.

A. 08.02. Chicory means the dried and roasted root of chicorium intybus, linn.

A. 08.03. <sup>1</sup>[Coffee chicory mixture or coffee mixed with chicory or coffee and chicory shall be pure ground coffee mixed with roasted and ground chicory and shall be in sound, dry and dust-free condition with no rancid or obnoxious flavour.

Any tin or other receptacle containing a mixture of coffee and chicory shall not bear any misleading expression.

The expression "French Coffee" may be used if followed by the words "mixed with chicory" or "blended with chicory".]

A. 09. Curry powder. Curry powder shall contain not less than 85 per cent. by weight of condiments and spices belonging to the group of aromatic herbs and seeds such as black-pepper, cinnamon, cloves, coriander, cardamom, chillies, cumin seeds, fenugreek, garlic, ginger, mustard, poppy seeds, turmeric, mace, nutmeg, curry leaves, white pepper, saffron and aniseeds, and shall contain not more than 15 per cent. by weight of farinaceous matter and salt. If the manufacturer includes any spices, condiments, or any substance other than the aromatic herbs and seeds enumerated, the exact nature of such added ingredient or ingredients shall be specified on the wrapper or label prominently and such conditions shall be made in lieu of, or partial replacement of farinaceous material and/or salt quota. The aromatic seeds and herbs enumerated constitute the proper ingredients and one or more than one, or all of these may be used at the discretion of the manufacturer in the preparation of the curry powder.

# A. 10. Edible fat-

A. 10.01. Beef fat or suet means fat obtained from a beef carcass. It shall have a saponification value varying from 193 to 200 and an iodine value from 35 to 46.

A. 10.02. Mutton fat means fat obtained from the carcass of sheep. It shall have a saponification value varying from 192 to 195 and an iodine value from 35 to 46.

A. 10.03. Goat fat means the rendered fat from goat. It shall have a saponification value varying from 193 to 196 and an iodine value from 36 to 45.

A. 10.04. Lard means the rendered fat from hogs and shall not contain more than one per cent. of substances other than fatty acids and fat. It shall have a saponification value varying from 192 to 198 and an iodine value from 52 to 65.

# A. 11. Milk and milk products-

A. 11.01. Milk means the normal clean and fresh secretion obtained by complete milking of the udder of a healthy cow, buffalo, goat or sheep during the period following at least 72 hours after calving or until colostrum free whether such secretion has been processed or not.

A. 11.01.01. Cow milk shall contain not less than 3.5 per cent. of milk fat, except in Orissa, where it shall be not less than 3 per cent. and in

<sup>1.</sup> Substituted by notification No. S. R. O. 2755, dated 20th November, 1956.

Punjab and Pepsu where it shall be not less than 4.0 per cent. The milk solids other than milk fat shall be not less than 8.5 per cent.

A. 11.01.02. Buffalo milk shall contain not less than 5.0 per cent. of milk fat except in Delhi, Punjab, Pepsu, Uttar Pradesh, Bihar, West Bengal, Assam, Bombay and Saurashtra where it shall be not less than 6 per cent. The milk solids other than milk fat shall be not less than 9 per cent.

A. 11.01.03. Goat or sheep milk shall contain not less than 3.0 per cent. of milk fat except in Madhya Pradesh, Punjab, Pepsu, Bombay, Uttar Pradesh and Travancore-Cochin where it shall not be less than 3.5 per cent. The milk solids other than milk fat shall be not less than 9 per cent.

Where milk, other than skimmed milk, is sold or offered for sale without any indication as to whether it is derived from cow, buffalo, goat, or sheep, the standard prescribed for buffalo milk shall apply.

- A. 11.02. <sup>1</sup>[Skimmed milk, either fresh or reconstituted, means milk from which all or most of the milk fat has been removed by mechnical or any other process and includes "separated milk" or "machine skimmed milk". The milk solids other than milk fat shall be not less than 8.5 per cent.]
- A. 11.03 Butter milk means the product obtained after removal of butter from curds by churning or otherwise.
- A. 11.04. Toned milk 'hall be prepared by toning milk with fresh separated milk or with separated milk reconstituted from spray dried skimmed milk powder.

It shall contain not less than 3.0 per cent. of milk fat and 8.5 per cent. of milk solids other than milk fat.

- A. 11.05. Butter means the product prepared exclusively from the milk or cream of cow or buffalo, or both, with or without the addition of salt and annatto and shall contain not less than 80 per cent, of milk fat and not more than 16 per cent. of moisture. No preservative is permissible in butter.
- A. 11.06. Dahi or curd. (a) whole milk dahi or curd means the product obtained from fresh whole milk either of cow or buffalo by souring. It shall not contain any ingredient not found in milk.
- (b) Skimmed milk dahi or curd means the product obtained from skimmed milk either of cow or buffalo by souring. It shall not contain any ingredient not found in milk.

The standard of purity of dahi or curd shall be the same as prescribed for the milk from which it is derived.

A. 11.07. Condensed milk means milk which has been concentrated from full cream milk by removal of part of its water with or without the addition of sugar, and includes the article commonly known as "evaporated milk" but does not include the article commonly known as "dried milk" or "milk powder". It shall be free from preservatives other than sugar and contain at least 31 per cent. of milk solids of which at least 9 per cent. shall be fat.

A. 11.08. Condensed skimmed milk means skimmed milk which has been concentrated by removal of part of its water with or without the addition

<sup>1.</sup> Substituted by notification No. S. R. O. 2755, dated 20th November, 1956.

of sugar. The total milk solids including milk fat—shall not be below 26.0 per cent. in the sweetened variety and 20 per cent. in the unsweetened variety.

A. 11.09. Chhanna means the product obtained by precipitating the cude from boiling whole milk of cow and buffalo by the addition of lactic or citric acids, or any other suitable coagulating agent.

Chhanna prepared from cow milk or buffalo milk shall contain a minimum of 15 per cent. of milk fat.

A. 11.10. <sup>1</sup>[Cream means that portion of milk rich in milk fat which has risen to the surface of milk on standing and has been removed or which has been separated from milk by centrifugal force. It shall contain not less than 23 per cent. of milk fat and shall not contain any added substance. The fat separated from cream shall conform to the specification prescribed for ghee.]

A. 11.10.01. Dry whole milk (milk powder, powdered milk, powdered whole milk shall contain not less than 95 per cent. of milk solids and 26 per cent, of milk fat.

A. 11.10.02. Dry skimmed milk (skimmed milk powder, powdered, skimmed milk) shall contain not less than 95 per cent. of milk solids.

- A. 11.11. Ice-cream means the frozen food made with cream, milk or other milk products, sweetened with sugar or honey and with or without, (a) egg, (b fruits, (e) nuts, (d) chocolates, (e) stabiliser not more than 0.5 per cent. of the finished product, and (f) permissible flavour or colour. It shall contain not less than 36 per cent. by weight of solids and 10 per cent. by weight of milk fat except that when the ice-cream contains fruits or nuts or both, the content of milk fat may be proportionately reduced but not less than 3.0 per cent. by weight. It shall not contain any starch, artificial sweetening agent or any other extraneons matter. Ice-cream prepared from skimmed milk shall not contain less than 8.5 per cent. of milk so ids other than milk fat.
- A. 11.12. Mixed ice-cream means the same as ice-cream in composition except that it may contain starch or any other innocuous filler. The fat content and total solid content should be the same as prescribed for ice-cream.
- A. 11.13. *Khoa* means the product derived from milk of cow or buffalo by partial desiccation of water therefrom by the process of heating and it shall not contain any ingredient not found in milk. The moisture content of *khoa* shall not exceed 10 per cent. and the fat content shall not be less than 20 per cent.
- A. 12. <sup>2</sup>[Margarine means any article of food which resembles butter in consistency, appearance and moisture content. It shall contain at least 80 per cent. of vegetable oils or of a mixture of vegetable oils with hydrogenated vegetable oils and not more than 16 per cent. moisture. It shall contain not less than 5 per cent. of its weight of til oil but sufficient to respond to Badouin Test, the red colour produced being not lighter than 2.0 Red Unit in a 1 cm. cell on a Lovibond scale.

2. Ibid.

<sup>1.</sup> Substituted by notification No. S. R. O. 2755, dated 20th November, 1956.

- A. 13. Saffron means dried stigmata and tops of styles of Crocus-sativus, and (a) it must not contain any foreign colouring matter or any other foreign matter, organic or inorganic, (b) it must not lose more than 12 per cent. of its weight when dried at 100° C (212° F) to constant weight, and (c) it must contain not less than 5 per cent. of petroleum ether extract.
- A. 14. Tea means tea derived exclusively from the leaves and buds of plants of the Camellia genus and the species. It shall conform to the following specification:
- (a) Total ash determined on tea dried to constant 5.0 to 8.0 per cent. weight at 100° C.
- (b) Total ash soluble in boiling distilled water ... Not less than 40.0 per cent. of total ash.
- (c) Ash insoluble in HCl ... Not more than 1.0 per cent.
- (d) Extract obtained by boiling dry tea (dried at Not less than 35 per cent. constant weight at 100° C) with 100 parts of distilled water for one hour under reflux.
- (e) Alkalinity of soluble ash

  ... Not less than 1.3 per cent.

  and not more than 2

  per cent. expressed as

  K<sub>2</sub>O.
- (f) Crude fibre ... Not more than 15 per cent.
- A. 15. Edible common salt means a crystalline solid, white or pale pink or light grey in colour, visible contamination with clay, grit ond other extraneous adulterants and impurities. It shall not contain moisture in excess of 6 per cent. of the weight of the undried sample. It shall contain on dry weight basis (a) at least 96.0 per cent. by weight of sodium chloride (Na Cl), not more than 1.0 per cent. by weight of matter insoluble in water, and (c) not more than 3.0 per cent. by weight of matter soluble in water other than sodium chloride.

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